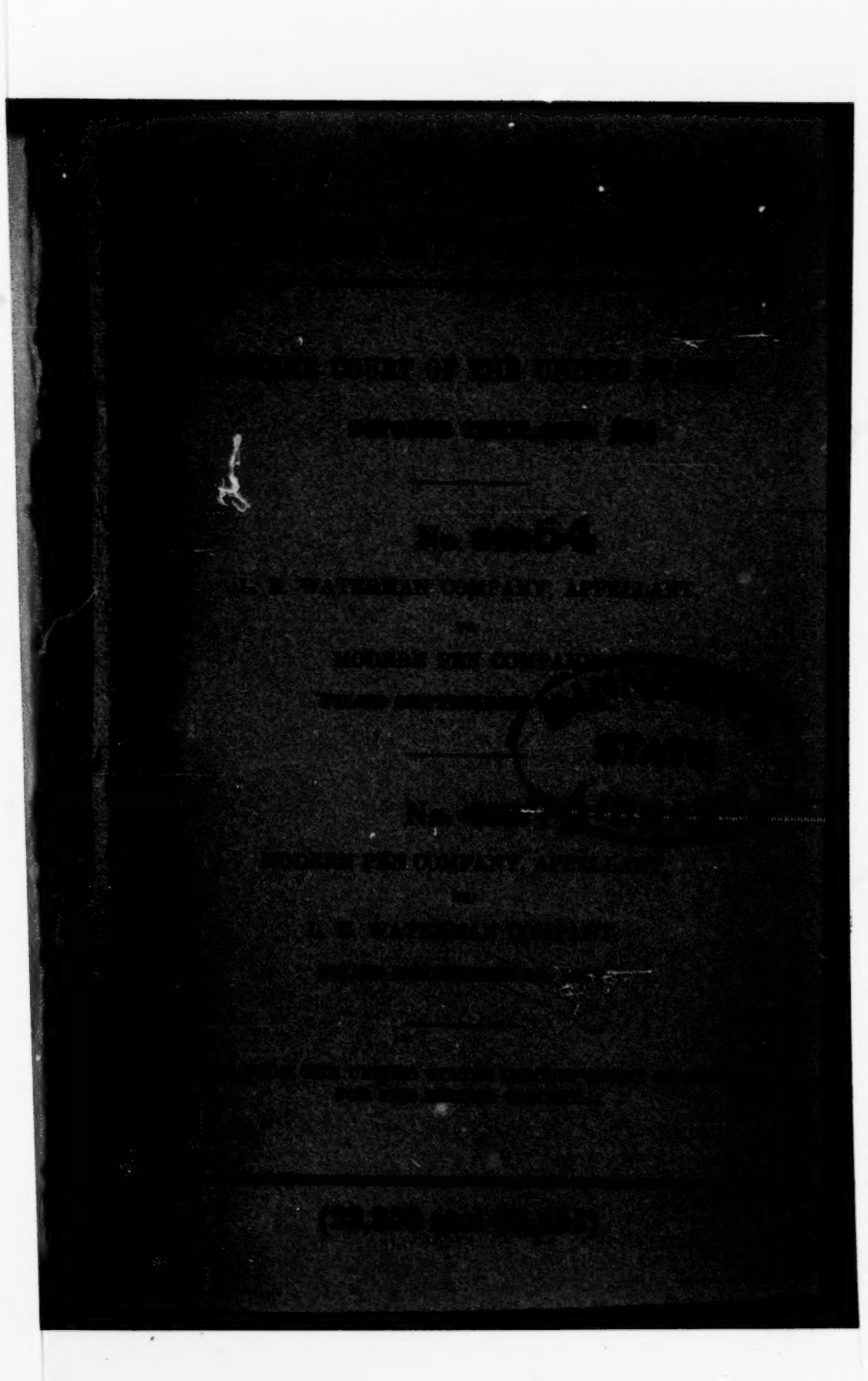

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**Demurrer.** 3403

UNITED STATES CIRCUIT COURT,

In Equity.

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Complainant,

vs.

MODERN PEN COMPANY,
Defendant. 3404

To the Honorable, the Justices of the Circuit Court of the United States, for the Southern District of New York:

The demurrer of the Modern Pen Company, the above named defendant, to the bill of complaint of the L. E. Waterman Company, the above named complainant:

This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint to be true, in such manner and form as the same are herein set forth and alleged, demurs to said bill and for causes of demurrer shows:

1. That it appears by the complainant's own showing by the 3405
said bill, that the complainant corporation is a citizen of the State of New York, having its principal place of business in the Southern District of New York, and that the defendant is a corporation, existing under the laws of the State of West Virginia, and having its principal place of business in the Southern District of New York, and that therefore this Court has no jurisdiction of the parties hereto because of the diverse citizenship thereof.

2. That it appears upon the face of said bill of complaint, by complainant's own showing, that it does not state facts sufficient

3406 *Demurrer*

to constitute a cause of action, and that the complainant is not entitled to the relief prayed by the bill against this defendant.

3. Said bill of complaint shows upon its face that the alleged offense of the defendant arose in selling fountain pens and parts thereof, bearing the stamp "A. A. Waterman & Co." but contains no allegation of fact to show that this defendant, as the selling agent of A. A. Waterman & Co., is not entitled to the use of the said trade name of "A. A. Waterman & Co."

4. Said bill of complaint contains no allegation that the defendant has simulated the alleged trade-mark of the complainant, except in the bare fact that it stamps its wares with the trade
3407 name of "A. A. Waterman & Co." and alleges no fact to show that the complainant is entitled to the exclusive use of the word "Waterman" or "Waterman's" or that the defendant, or A. A. Waterman & Co. or any other person or firm having the right to use the word "Waterman" either as a family name or by the proper assignment thereof, has not the equal right with the complainant to the use of such name.

5. That it appears in the bill of complaint that the alleged registered trade-mark of the complainant, to wit, the word "Waterman's" is merely the name of the complainant's assignor, not written, printed, impressed or woven in some particular or distinctive manner nor associated with a portrait of the individual.

3408 6. That it does not appear by the bill of complaint that the said alleged registered trade-mark, to wit, the word "Waterman's" had been in actual and exclusive use by the applicant therefor, or by complainant or its predecessors, in commerce with foreign nations, or among the several States, or with the Indian tribes, for ten years preceding the passage of the Trade-Mark Act of 1905.

7. That it does not appear by said bil of complaint that the defendant has used any of the said alleged trade-marks set forth in said bill of complaint in commerce with foreign nations, or among the several States of the United States or with Indian tribes.

*Demurrer*

3409

8. That it does not appear from the said bill of complaint that this defendant has ever used the word "Ideal" in connection with the manufacture and sale of fountain pens or the parts thereof, nor does said bill of complaint allege any fact to show that the defendant has infringed the complainant's trade-mark in so far as the word "Ideal" is concerned.

9. That the alleged registered trade-mark "Waterman's" of the complainant is shown by the bill of complaint to be invalid, at least as against this defendant, and that the alleged registered trade-mark "Waterman's Ideal Fountain Pen, N. Y." of the said complainant is shown by the bill of complaint to be invalid, at least as against this defendant, except as to the word "Ideal" concerning which there is no allegation of infringement.

3410

10. That the acts of infringement of said trade-mark alleged in the bill of complaint to have been done by the defendant were no infringement of said registered trade-marks—

And that therefore this complainant has not in and by said bill of complaint made or stated any such cause as doth or ought to entitle this Honorable Court to take jurisdiction over this cause, or the alleged acts of unfair competition alleged in the bill of complaint.

Wherefore this defendant demurs to the jurisdiction of this Court and humbly demands the judgment of this Court whether they shall be compelled to make any further or other answer to the bill of complaint and pray to be hence dismissed with the costs and charges in this behalf most wrongfully sustained.

3411

And this defendant, as grounds of special demurrer, does hereby demur:

11. To so much of the prayer for relief as asks for damage suffered by the complainant for any infringement of said registered trade-marks and for cause therefor, shows that it does not appear from the bill of complaint that the registrant of said registered trade-marks has given any notice to the public or to this defendant that the said trade-marks were registered or of any infringement of said defendant as required by statute.

3412

12. As to so much of the prayer for relief as asks for an injunction against the defendant restraining it as alleged in the paragraphs of said prayer marked "1," "2" and "3" and from each and every part of said prayer for relief.

And for cause of demurrer shows that the complainant is not entitled to any such relief as prayed for, because such injunction, if granted as prayed, would prevent defendant from so doing in a lawful way or manner.

Wherefore this defendant demurs to said prayer for relief and each and every part thereof separately and humble prays that the bill of complaint as to such prayer of relief and each part
3413 thereof, be dismissed with costs against this plaintiff.

ALEXANDER S. BACON,
Attorney for Defendant,
37 Liberty Street,
New York City.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

Dated, New York City, June 2, 1910.

ALEXANDER S. BACON,
Of Counsel for Defendant,
Modern Pen Company.

3414 State of New York,
City and County of New York, } ss.:
Southern District of New York,

I, Isaac E. Chapman, being duly sworn, deposes and says: I am the president of the defendant, the Modern Pen Company, above named, and that the foregoing demurrer is not interposed for delay.

ISAAC E. CHAPMAN.

Sworn to before me this
3rd day of June, 1910.
Joseph J. Glatzmayer,
Notary Public,
Kings County, No. 125.
Certificate filed in New York County.

(Endorsed): U. S. Circuit Court, Southern District N. Y.—Filed June 6, 1910—John A. Shields, Clerk.

## Answer to Amended Bill of Complaint.

3415

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Complainant,
against
MODERN PEN COMPANY,
Defendant.

3416

The answer of the above named defendant to the amended bill of complaint of the above named complainant:

In answer to the said amended bill of complaint, the defendant, the Modern Pen Company, says as follows:

A. This defendant admits the allegations of the FIRST paragraph of the said amended bill of complaint, which paragraph relates to the incorporation and residence of the parties hereto.

B. This defendant has no knowledge or information, sufficient to form a belief, as to the allegations contained in the SECOND paragraph of the said amended bill of complaint and therefore denies each and every allegation thereof. This de- 3417
defendant alleges, on information and belief, that the word "WATERMAN'S" and the words "WATERMAN'S IDEAL FOUNTAIN PEN, N. Y." are not trade-marks of the complainant and are not susceptible of being adopted as trade-marks in that the family name "WATERMAN'S" and the word "Fountain Pen, N. Y." cannot legally be used or adopted as a trade-mark.

C. This defendant has no knowledge or information sufficient to form a belief, as to the allegations contained in the THIRD paragraph of the said amended bill of complaint and it therefore denies each and every allegation thereof. This defendant alleges on information and belief, that the word

3418 *Answer to Amended Bill of Complaint*

"WATERMAN'S" and the words "WATERMAN'S IDEAL FOUNTAIN PEN, N. Y." are not trade-marks of the complainant and are not susceptible of being made trade-marks, in that the word "WATERMAN'S" and the words "FOUNTAIN PEN, N. Y." cannot legally be adopted as a trade-mark.

D. This defendant has no knowledge or information sufficient to form a belief, as to the allegations contained in the FOURTH paragraph of the said amended bill of complaint and therefore denies each and every allegation thereof. This defendant alleges on information and belief, that the word "WATERMAN'S" and the words "WATERMAN'S IDEAL FOUN-
3419 TAIN PEN, N. Y." are not trade-marks of the complainant and are not susceptible of being made trade-marks in that the word "WATERMAN'S" and the words "FOUNTAIN PEN N. Y." cannot be legally registered or adopted as trade-marks. Defendant denies absolutely that during the time indicated in said paragraph "the name "WATERMAN" and "WATERMAN'S" affixed to, or used in connection with the sale of fountain pens has denoted and indicated origin and has denoted and indicated that the plaintiff company is the maker of fountain pens bearing said name" but on the contrary, this defendant alleges, on information and belief that the use of the name "Waterman" and "Waterman's" by the complainant has not been exclusive at any time for more than twelve years last past; that others have legally made use
3420 of the words "Waterman" and "Waterman's" in connection with the manufacture and sale of fountain pens and the parts thereof, and the word "Waterman" is a family name and not susceptible of being appropriated and registered as a valid trademark; that during said period various firms of "A. A. Waterman & Company" with the full knowledge of this complainant, have been continuously manufacturing and selling fountain pens and parts thereof bearing the stamp and trade name of "Waterman" without interference from this complainant and under the express permission of a decree of the Supreme Court of the State of New York entered in the office of the Clerk of the County of New York on the 23rd day of September, 1898, in an action in the said Court, entitled L. E. Waterman Company,

plaintiff, against Arthur A. Waterman and Edward L. Gibson, defendants, and that the use of the said trade name "Waterman" or "Waterman's" is not exclusive in this complaint but the respondent has equally with the complainant the right to the use of the said name.

E. This defendant denies each and every allegation contained in the FIFTH paragraph of the said amended bill of complaint, excepting that it denies any knowledge or information, sufficient to form a belief, as to what unnamed dealers may have done by way of advertising and offering for sale the wares sold by the defendant; and except that this defendant admits, and it alleges, that it is a selling agent of the firm of A. A. Waterman & Co., 3422
which manufactures and sells fountain pens and the parts thereof stamped with the words "A. A. Waterman & Co., N. Y." as they have a right so to do, and it alleges that the said stamp "A. A. Waterman & Co., N. Y." is not an imitation or simulation of the complainant's corporate name or trade-marks or the trade name of any of its goods but on the contrary this defendant alleges that it has the exclusive right to use, in the Eastern part of the United States the trade name of "A. A. Waterman & Co." and has the right to the use of the words "Waterman" or "Waterman's" in connection with the manufacture and sale of fountain pens and the parts thereof.

F. This defendant denies each and every allegation contained in the SIXTH paragraph of the said amended bill of complaint 3423
except that the defendant admits (1) that there is no person by the name of Waterman now connected with the defendant's business in that the defendant is a corporation; (2) that the defendant advertises and holds itself out as sole selling agent of A. A. Waterman & Co.; (3) that it, the defendant, advertises and represents that the fountain pens advertised, offered for sale and sold by the defendant, and which bear the mark or stamp of A. A. Waterman & Co., are manufactured by the said A. A. Waterman & Co.

Defendant denies that the firm name of A. A. Waterman & Co., is a fictitious business name and alleges that it legally and

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rightfully bears that name and denies that the business of A. A. Waterman & Co., is used for the purpose of deceiving the public; denies that it is used with the intention or purpose of passing off on the public, pens other than those manufactured by the said A. A. Waterman & Co., and alleges that it has never used such name for the purpose of indicating that its wares were those manufactured by the complainant, but on the contrary it has at all times sought to have the public distinguish the inferior out-of-date pens manufactured by the complainant under an expired patent from the superior up-to-date pens manufactured by A. A. Waterman & Co. under existing patents; and alleges that the defendant and various firms of A.
3425 A. Waterman & Co., have spent hundreds of thousands of dollars in advertising its wares in order that the public might know that the defendant's fountain pens were to be distinguished from the inferior pens manufactured by the complainant.

G. This defendant denies each and every allegation contained in the SEVENTH paragraph of the said amended bill of complaint except that it has no knowledge or information sufficient to form a belief as to the allegations thereof relating to the repair and exchange of pens and the belief of unnamed purchasers as to what party was the manufacturer of their pens. Defendant admits that some confusion necessarily has arisen by reason of the fact that the name L. E. Waterman Company and A. A. Waterman
3426 & Co., are somewhat similar but alleges that such confusion arises from that similarity only and from no other reason and that A. A. Waterman & Co., have as much right to the word "Waterman" or "Waterman's" as has the complainant and the defendant has the exclusive right to use, in the Eastern part of the United States, of the trade name A. A. Waterman & Co.

H. This defendant denies each and every allegation contained in the EIGHTH paragraph of the said amended bill of complaint.

I. This defendant denies each and every allegation contained in the NINTH paragraph of the said amended bill of complaint.

J. This defendant denies each and every allegation contained in the TENTH paragraph of the said amended bill of complaint.

K. FOR A FURTHER SEPARATE AND DISTINCT DEFENSE TO THE SAID AMENDED BILL OF COMPLAINT THIS DEFENDANT ALLEGES:

(1) That it is the sole selling agent of the firm of A. A. Waterman Co., composed of Isaac E. Chapman and William L. Chapman who legally do business under the firm name of A. A. Waterman & Co., as the owners, and entitled to the exclusive use, in the Eastern part of the United States, of the trade name of A. A. Waterman & Co., by lawful assignment in writing of the good will, trade name, trade-marks and patents of the firm of A. A. Waterman & Co., which at the time of said written assignment was composed of Arthur A. Waterman, Isaac E. Chapman and William L. Chapman, and the said firm of A. 3428
A. Waterman & Co., have the same right under the laws of the State of New York, and of the United States to the use of the trade name of A. A. Waterman and of A. A. Waterman & Co., as if the said Arthur A. Waterman were a member of said firm after July 1st, 1906, as he was prior to that time.

Defendant alleges, on information and belief, that said A. A. Waterman, either individually or as a member of a firm of A. A. Waterman & Co., of which he was an actual and *bona fide* member, has continuously manufactured and sold fountain pens and the parts thereof, stamped with the trade name A. A. Waterman & Co., for more than twelve years last past. That this complainant is not entitled to the exclusive use of the word "Waterman" in that it is a family name and cannot legally be appro- 3429
priated and registered as a trade-mark or a trade name, in that neither this complainant nor any other person has had, nor has been entitled to the right to the exclusive use of the word "Waterman" for the ten years preceding the year 1905.

That in the year 1893 this complainant brought an action in the Supreme Court of the State of New York, entitled L. E. Waterman Company, plaintiff, against Arthur A. Waterman and Edward L. Gibson, defendants, wherein a decree was entered enjoining the defendants therein from the use of the form of a corporate name of A. A. Waterman Pen Co., but expressly permitted those defendants the use of the trade name of A. A. Waterman & Co. in the words following, "But the defendants are

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not prohibited from indicating that the fountain pens made by them are made or prepared or sold for or by Arthur A. Waterman & Company or A. A. Waterman & Company."

That continuously since said decree and with the full knowledge, and without opposition of this complainant said A. A. Waterman (the said assignor of the present firm of A. A. Waterman & Co.) either individually or as a member of the firm of A. A. Waterman & Co., has continuously manufactured and sold fountain pens and the parts thereof bearing the stamp of A. A. Waterman & Co., and the present firm of A. A. Waterman & Co., now maintains that it has the absolute right, by valid assign-
3431 ment, to the exclusive use of the good will, trade name, trade-marks and patents lately belonging to Arthur A. Waterman and that this complainant is not entitled to the exclusive use of the word "Waterman" or "Waterman's" and this defendant has never, either directly or indirectly, violated any valid trade-mark or trade name of the complainant of which it has the exclusive right to use.

Wherefore this defendant demands that the complainant's amended bill of complaint be dismissed with costs and that a decree may be entered giving to the defendant affirmative relief as to its rights as claimed in this answer.

ALEXANDER S. BACON,
Solicitor for Defendant,
37 Liberty Street,
3432 City of New York.

City, County and State of New York,
Eastern District of New York, } ss.:

Hobart W. Geyer, being duly sworn, says that he is the Treasurer of the Modern Pen Company, the defendant above named that he has read the foregoing answer to the amended bill of complaint herein and knows the contents thereof, that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that the reason that this verification is made by deponent and not by the defendant in per-

son is that the defendant is a foreign corporation; the sources of deponent's information and the grounds of his belief as to all matters therein alleged to be stated on information and belief are conversations with Mr. A. A. Waterman and documents subject to deponent's inspection.

HOBART W. GEYER.

Sworn to before me this
5th day of August, 1910.
Richard E. Nebel,
Notary Public,
Kings County.
(Seal)
Certificate filed in New York County. 3434

A copy of the within answer is hereby admitted.
Dated, August 6th, 1910.

WATSON & RAYMOND,
Attorneys for Complainant.

(Endorsed): U. S. Circuit Court, Southern District of N. Y., Filed Aug. 8, 1910, John A. Shields, Clerk.

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3436 CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant.

3437 Please to take notice that we shall proceed to take proofs for final hearing on the part of the defendant, under the Equity Rules and in accordance with the Statutes of the United States in such cases made and provided, and in pursuance of the rules and practice of this Court, before Frederick M. Adams, an Examiner of this Court, under such statutes and rules, at the office of Alexander S. Bacon, #37 Liberty Street, Borough of Manhattan, City of New York, on the 13th day of April, 1911, at 10:30 o'clock in the forenoon.

We desire the evidence to be adduced in this cause to be taken orally.

You are invited to attend and cross-examine the witnesses produced. The examination will be adjourned to such time and
3438 place as may be required, without further notice.

Dated, New York City, April 12, 1911.

Very respectfully,
ALEXANDER S. BACON,
Solicitor for Defendant,
37 Liberty Street,
New York City.

To:
Messrs. Watson & Raymond,
Solicitors for Complainant,
10 Wall Street,
New York City.

*Harry C. Bartlett, Jr.* 3439

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.

3440

Proofs for final hearing on the part of the defendant under the Equity Rules and Act of Congress as amended, and in accordance with the Statutes of the United States, and in pursuance of the rules and practice of this Court, taken before Frederic M. Adams, an Examiner of this Court, at the office of Alexander S. Bacon, at No. 37 Liberty Street, Borough of Manhattan, New York City, on the 27th day of March, 1911, at 10 o'clock in the forenoon, pursuant to notice hereunto annexed.

Appearances:

Samuel S. Watson, for Plaintiff.
Alexander S. Bacon, for Defendant.

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HARRY C. BARTLETT, JR., a witness called on behalf of the defendant, being duly sworn, testified as follows:

*Direct-examination by Mr. Bacon:*

Q1. State your name, residence and business? A. Harry C. Bartlett, Jr., Owensboro, Kentucky; my present business is with the Weidlich and Simpson Pen Company.

Q2. Were you formerly employed by the Modern Pen Company? A. I was.

Q3. When did that employment begin? A. In January, 1908, I think.

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Q4. And continued until when? A. Until the first of February, 1911.

Q5. Did you cover the states of Ohio, Indiana and Michigan during that period of employment by the Modern Pen Company? A. Yes.

Q6. Do you remember calling at Delaware, Ohio, and selling a bill of goods to Mr. Sells, or Sells Brothers, in 1910? A. I remember calling on him, but I don't think I sold him anything.

Q7. Whom did you see, if your remember, when you called upon them? A. The two brothers.

Q8. You saw them both? A. Yes.

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Q9. Do you remember what conversation you had with them at that time, calling your special attention to whether or not you introduced yourself and told who you were representing? A. Yes.

Q10. State what you said to these brothers? A. I told my name and gave them my card and told them I was selling A. A. Waterman's fountain pens, self-filler.

Q11. Did you call them merely Waterman pens? A. No, sir.

Q12. Did you say anything about the Modern Pen Company? A. Yes, I showed them a line of pens.

Q13. Are you sure that you told them that you represented the A. A. Waterman pen and not merely the Waterman pen? A. I am sure I told them the A. A. Waterman pen.

Q14. And he knew what you were talking about? A. Yes, I

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think he did.

Mr. Raymond: I object to the question and ask that the answer be stricken out on the ground that it is a conclusion of the witness as to what he knew.

Q15. Did you give him any advertising literature? A. Nothing, only my card.

Q16. Have you one of those cards? A. I don't believe I have. I have not any.

Defendant's counsel produces a card which is offered in evidence.

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Objected to as incompetent, irrelevant and immaterial.

Marked Defendant's Exhibit A, March 27, 1911, F. M. A., Exr.

Q17. Do you remember the substance of the entire conversation? A. Yes.

Q18. Give it to us as nearly as you can? A. I tried to sell them pens and they looked the pens over and the prices, etc., and then said they handled a large stock of Bolles' pens and they would have to dispose of them before they could buy any more pens; and I talked about trading them out of those pens, taking them up in exchange for our pens, and the one that I was talking to at that time said that he would have to take it up with his brother and I should come back later. I did call, I think, two or three hours later, and talked to the brother, and he told me he would let me know this fall.

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Q19. When you talked with the second brother, did you say that you represented the Waterman Company? A. He asked me which one, which company, I represented and I told him the Modern Pen Company, A. A. Waterman.

Q20. About what time of the year was this? A. The last of August or along the first of September, 1910.

Q21. Do you also remember being in Newcastle? A. Yes.

Q22. And calling upon Mr. Buhrman? A. Yes.

Q23. That was about the same time? A. It was several weeks later; it was in October, I think.

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Q24. Do you remember what conversation you had with him along the same lines? A. Yes, when I went in and introduced myself I asked him how the A. A. Waterman self-fillers were selling with him, and he went right up in the air; he said he didn't want any more of them, he had so much trouble with them that he didn't want to handle them any further.

Q25. Then he had been accustomed to selling them before, had he? A. Yes, he sold them before.

Q26. Did you tell him that you represented the Waterman pen or the A. A. Waterman? A. The A. A. Waterman.

Q27. He stated in his examination that he did not know the firm called A. A. Waterman & Co.; is that true?

Mr. Raymond: Objected to.

A. I can only state the conversation when I sold him the first time.

Q28. Please do so? A. I called on him shortly after they had bought this store, their present place of business. I showed him a line of pens and he asked me what the difference was between our pens and the L. E. Waterman pens. I showed him the difference, and he said he could get our pens from the jobbers. I told him he could. He got McClurg's catalogue and compared the prices and I showed him where he could buy the pens direct from us cheaper than he could buy them from McClurg. I also
3449 told him that he could buy L. E. Waterman pens from Montgomery Ward. I showed him in the catalogue cuts of their pens and the description of them, prices, etc.

Q29. Was the first time you went to him on or about the 31st of March, 1910? A. Yes, about that.

Q30. Then this conversation that you have just now referred to was the first conversation in March, 1910? A. Yes.

Q31. Did you introduce yourself at that time as selling Waterman pens? A. No, sir.

Q32. What did you tell him then? A. I told him I was selling A. A. Waterman pens, self-fillers.

Q33. Did you tell him anything about the Modern Pen Company? A. Yes, when he signed the order he asked me who the
3450 Modern Pen Company was. I told him it was the same as A. A. Waterman.

Q34. When you took his order, did you give him a duplicate of the order? A. Yes, always.

Q35. Is that the order that you took, on March 12, 1910, shipped March 21, 1910 (showing the witness a paper)? A. Yes.

Q36. Did he have a carbon copy? A. I gave it to him.

Q37. At the time? A. I did.

Q38. Is that the blank that you always used in making a sale? A. It is.

Q39. Did you ever make a sale at any time when you did not give to the customer at the time of taking the order a duplicate order filled out on that bank? A. I always gave them a duplicate.

Defendant's counsel offers in evidence the blank referred to.

Same objection.

Marked Defendant's Exhibit B, March 27, 1911, F. M. A., Exr.

Q40. Have you sold him a number of bills after that? A. No, sir, only that one bill.

Q41. Do you remember selling a bill of goods to Herbert Baker, druggist, of Allegan, Michigan? A. Yes.

Q42. About August 26, 1910? A. Along there, yes.

Q43. What did you say when you introduced yourself to Mr. Baker? A. I told him I was selling the A. A. Waterman pens 3452
and showed him a line and he looked it over and talked about it and he asked me to come back after supper, that the man he bought out would be there and go over the line with him. I went back after supper and they were both there and looked the line over, talked about our pens and Parker pens and L. E. Waterman pens and John Holland pens.

Q44. Did you sell him a bill of goods that day? A. I did.

Q45. Did you give him a duplicate order? A. I did.

Q46. And was that on the same blank as the one in evidence? A. Yes; and while I was selling this bill of goods he had two customers come in who selected pens, special pens, and ordered them.

Q47. From your samples? A. Yes. 3453

Q48. These pens were shipped to him? A. I think so.

Q49. You promised him a case? A. Yes.

Q50. And the case was not sent on? A. I told him the case probably would follow; it might be a week or two weeks behind the pens, but that they would be shipped directly from the factory at Kendallville, Indiana, where the cases were made; and I also gave him exclusive agency of the town.

Q51. Did you explain to him the difference between L. E. Waterman and A. A. Waterman? A. Yes.

Q52. And told him that he must make a distinction in selling the goods? A. Yes.

Q53. What did you say about it? A. I didn't tell him what he could do, no. I showed him our pens and explained the difference between our pen and the L. E. Waterman.

Q54. He sent back the pens unopened, didn't he? A. I don't know.

Q55. You have not seen him since? A. No.

Q56. Didn't you have any correspondence with him? A. Yes.

Q57. Have you a copy of the letter? A. I have not. Mr. Geyer wrote me that he returned the pens, claiming that he thought at the time he was buying L. E. Waterman pens, and he wrote him about it.

3455 Q58. Didn't he say that the reason he sent them back was because they had not sent the case? A. Yes, he said he thought he was buying the L. E. Waterman pens and as the case had not come the pens were of no use to him without the case; he kept them, I believe, two or three weeks and said that he now had bought the L. E. Waterman pens.

Q59. Some time before the case came the Waterman people had been around and sold him a lot of goods so he sent them back? A. Yes, he sent them back, I guess so; that is what he said.

Q60. I show you this order taken on August 26th, 1910, and ask you if that is the Herbert Baker order (handing witness the paper)? A. Yes.

Q61. Signed by you? A. Yes.

3456 Q62. And it is in all respects similar to the other order put in evidence today? A. It is.

Q63. "The Modern Pen Company, 22 Thames Street, Selling Agents for A. A. Waterman Company"—in large letters at the bottom? A. Yes.

Q64. Did you call on anybody else there? A. No.

Q65. Do you remember calling at Holland, Michigan, on a Mr. Henry R. Brink, at about just the same time? A. Yes.

Q66. What did you say to Mr. Brink when you went to see him? A. I introduced myself and told him I was selling the A. A. Waterman pens.

Q67. Did you give him a card, too? A. I don't remember whether I did or not. Some of them I would give a card and some I would not.

Q68. Did he know all about the difference?

Mr. Raymond: That is objected to.

Q69. Did he state anything about the two companies? A. Yes.

Q70. What did he say about them? A. He asked me if they were not in trouble. I told him they were having a little trouble, yes. I talked quite a bit about it. I did not sell him any pens, I don't believe; I don't remember whether I sold him or not.

Q71. Here are two letters marked for identification. Just 3458
read those (handing witness the papers). I show you what purports to be an order dated August 26th and ask you if you can now state whether you sold him a bill of goods? A. I did.

Q72. How much did it amount to? A. $30 to $35, I should think; $35, I guess.

Mr. Bacon: We offer in evidence the letters for identification, dated December 15th, 1910, H. R. Brink to Modern Pen Company; and December 19th, 1910, Modern Pen Company to H. R. Brink.

Mr. Raymond: Objected to as incompetent, irrelevant and immaterial and not binding in any way on the plaintiff.

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The two letters are marked Defendant's Exhibits C and D, March 27th, 1911, F. M. A. Exr.

Copies to be substituted for the originals.

Q73. Did you also call upon a man named Donald D. Bradford of Holland, Michigan, at about the same time? A. I called on several there, but I don't remember the names. I called on a druggist there that, I think, used to handle our pens.

Q74. Did you go into the store of any person there in Holland and say that you were the western representative of the Waterman pen? A. No, sir; only the A. A. Waterman.

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Q75. Did you in each case state that you represented A. A. Waterman & Company and the Modern Pen Company? A. Yes.

Q76. Do you remember at all calling upon this druggist, Mr. Bradford? A. I called on a druggist there; I don't remember the name.

Q77. But you do know that if you had any conversation with him at all, in relation to your pen, that you told him whom you represented?

Mr. Raymond: That is objected to as purely theoretical.

A. Yes.

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Q78. Had you had any instructions when you first started out to sell A. A. Waterman pens, as to what you should do, and if so, state what the instructions were and when they were given and who gave them? A. The Modern Pen Company, Mr. Geyer instructed me that they had no connection whatever with the L. E. Waterman Pen Company and that I must sell the Modern Pen Company, A. A. Waterman pens, on their reputation and must never state that they were the L. E. Waterman or Ideal Waterman, or that they had any connection whatever with that company.

Q79. Did he say anything about using the word Waterman alone, or that you were to use the initials in all cases? A. He did not say anything about that, no; only he instructed me as

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to the name of the company.

Q80. And that you were to tell them in each instance that they were A. A. Waterman goods?

Mr. Raymond: Objected to as leading.

A. Yes.

Q81. Did you ever at any time, during the period that you were working for the Modern Pen Company, or A. A. Waterman Company, introduce yourself as a representative of the Waterman pen? A. No, sir.

Q82. Did you at all times and in every instance represent plainly to the purchaser, or attempted purchaser, that you represented A. A. Waterman's goods?

Mr. Raymond: Same objection and leading.

A. Yes.

Q83. Had you any correspondence in relation to these matters with the home company? A. Yes.

Q84. Are these letters and copy letters that you sent and received in relation to this matter, and to a controversy with the A. A. Waterman Company of Chicago (showing witness paper)? A. Yes.

Mr. Bacon: I offer these letters in evidence and will furnish copies of them. They are as follows:

Modern Pen Company to H. C. Bartlett, March 31, 1909. 3464

Marked Defendant's Exhibit E, March 27th, 1911, F. M. A., Exr.

Modern Pen Company to Bartlett, dated April 7, 1909.

Marked Defendant's Exhibit F, March 27, 1911, F. M. A., Exr.

Bartlett to Modern Pen Company, dated April 4, 1909.

Marked Defendant's Exhibit G, March 27, 1911, F. M. A., Exr.

Bartlett to Modern Pen Company, dated May 15, 1910.

Marked Defendant's Exhibit H, March 27, 1911, F. M. A., Exr.

Modern Pen Company to Bartlett, dated May 19, 1910.

Marked Defendant's Exhibit I, March 27, 1911, F. 3465 M. A., Exr.

Modern Pen Company to Bartlett, dated August 6th, 1909.

Marked Defendant's Exhibit J, March 27, 1911, F. M. A., Exr.

Modern Pen Company to Bartlett, dated September 7th, 1909.

Marked Defendant's Exhibit K, March 27, 1911, F. M. A., Exr.

Modern Pen Company to Bartlett, dated September 13, 1909.

3466

Marked Defendant's Exhibit L, March 27, 1911, F. M. A., Exr.

Bartlett to Modern Pen Company, dated September 9th, 1909.

Marked Defendant's Exhibit M, March 27, 1911, F. M. A., Exr.

Bartlett to Modern Pen Company, dated October 23, 1910.

Marked Defendant's Exhibit N, March 27, 1911, F. M. A., Exr.

Mr. Raymond: I object to all the above letters on the ground that they are incompetent, irrelevant and im-

3467 material and are an attempt on the part of the defendant company to make a record for the purposes of this suit.

*CROSS-EXAMINATION by Mr. Raymond:*

XQ85. Will you state specifically what instructions were given you at the time when you became a member of the selling force of the Modern Pen Company? A. I was instructed to sell the pen as Modern Pen Company—selling agent for A. A. Waterman.

XQ86. Who gave you these instructions? A. The company—the Modern Pen Company.

XQ87. Who in the company? A. Mr. Geyer.

3468 XQ88. Is he the only person you had any conversation with on this subject? A. He is the man I received the instructions from, yes.

XQ89. Have you talked with any of the other salesmen? A. Mr. Rightmire, yes.

XQ90. Did you ever have any conversation with him or receive any instructions from him as to how you should sell these pens? A. No.

XQ91. Had you had any previous experience in the fountain pen business? A. Yes.

XQ92. Who were you with? A. William A. Welty of Waterloo, Iowa.

XQ93. Is he a manufacturer of fountain pens? A. I don't know.

XQ94. Did you sell pens for him? A. Yes.

XQ95. What make of pens did you sell? A. William A. Welty.

XQ96. Were you familiar with the pens that were manufactured by the L. E. Waterman Company? A. Yes.

XQ97. Did you know at the time when you came to the Modern Pen Company that the pens that you were to sell were not the pens of the L. E. Waterman Company? A. Yes.

XQ98. How long have you been familiar with the pens of the defendant, the Modern Pen Company? A. Ten or fifteen years. 3470

XQ99. Did you ever handle them or use them? A. Yes.

XQ100. Will you state just what was told you at the time when Mr. Geyer gave you the instructions and started you on the road? A. Nothing further than I have stated.

XQ101. Is that all the conversation that you had about it? A. Yes.

XQ102. And I understand he did not give you any instructions as to how you should sell the pens to the customers, other than that you were to say that you were selling A. A. Waterman pens? A. A. A. Waterman or Modern pens; never to represent them to be L. E. Waterman. He always told me that—wrote me that.

XQ103. Did he give you any instructions as to how you should inform the dealers that they should sell the pens? A. Just what 3471 they bought.

XQ104. I ask you that question. Did Mr. Geyer tell you to instruct the dealers to whom you sold pens how they should sell them to the public? A. No, it was not necessary.

Mr. Raymond: I move to strike out the answer.

XQ105. Did you ever give any dealer to whom you sold pens instructions as to how he should sell the pen to the public? A. I always instructed them as to the working of the pen and explained the pen to them and showed them how to explain it to their customers.

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XQ106. How did you introduce yourself to the trade? A. Sometimes with a card and sometimes told them who I was.

XQ107. What did you say when you told them who you were? A. I told them my name was H. C. Bartlett, Modern Pen Company, A. A. Waterman, New York.

XQ108. Did you know who composed this A. A. Waterman, as you call it? A. Yes.

XQ109. Who did you say composed the concern of A. A. Waterman? A. Mr. Chapman and the Chapman estate.

XQ110. What was said to you by Mr. Geyer about A. A. Waterman? A. Mr. A. A. Waterman personally?

XQ111. Yes? A. That he was not connected with this concern

3473 here; that they bought his interest.

XQ112. Do you remember this letter that you wrote under date of April 4, 1909? A. I don't remember all of it.

XQ113. Do you remember asking "What relation or connection has A. A. Waterman with L. E. Waterman"? A. Yes.

XQ114. Was that ever explained to you? A. Yes.

XQ115. Prior to the date of this letter? A. Yes.

XQ116. Why did you write about it then? A. A dealer asked the question if they were brothers.

XQ117. What did you tell them? A. I told them I didn't think so.

XQ118. Didn't you tell them that they were brothers? A. No, sir, because I did not know.

3474 XQ119. Did you say that you thought they were brothers? A. No, sir.

XQ120. What did you tell the trade about A. A. Waterman? A. I did not tell them anything about A. A. Waterman personally.

XQ121. Did not the trade ever ask you about A. A. Waterman? A. They would ask me sometimes where he was, what he was doing, yes.

XQ122. Did they ask who he was? A. Yes, some of the trade that was not familiar with the two companies would ask.

XQ123. Did you find any of the trade who were familiar with the plaintiff company and A. A. Waterman & Company? A. Yes.

XQ124. And when you found one that was not familiar what did you say to him with reference to A. A. Waterman? A. I explained to him that they had no connection with one another whatever, a different pen, altogether different pen; and I always gave L. E. Waterman credit of having a good pen.

XQ125. What did you say in reference to the organization of the different companies? A. I simply stated that they were two different companies, had no connection whatever with one another.

XQ126. Did you tell them that A. A. Waterman was a company, or his company? A. No, sir.

XQ127. What did you tell them? A. I told them that the Modern Pen Company had bought the A. A. Waterman plant 3476 and patents and business.

XQ128. And that they were the same thing? A. Manufactured the same pen, yes.

XQ129. Did you tell them that A. A. Waterman was a corporation? A. No, sir.

XQ130. What did you say with reference to that? A. It was not necessary to tell them that it was a corporation. The printed matter shows what they are. I told them it was a company. It was not necessary to state that it was a corporation.

XQ131. You told them that it was a company? A. Yes.

XQ132. How did you introduce yourself; how did you try to sell these different dealers? Imagine for a moment that I am a dealer, unfamiliar with the line and you were trying to sell 3477 me a bill of pens? A. I have stated before how I introduced myself.

XQ133. Tell us again? A. I would ask for the buyer. I would say to the buyer, "My name is Bartlett. Modern Pen Company, A. A. Waterman, New York." I would ask if you was in the market for fountain pens. If you said no I would bid you good bye and leave. If you said yes I would show you the pens and explain them to you, giving the discount.

XQ134. How did you describe the pens to the dealer? A. Simply showed him the working of the pen.

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XQ135. What name did you call the pen by that you were showing to the dealer? A. As I stated before, Modern Pen Company, A. A. Waterman.

XQ136. Do you mean to say every time you spoke of these pens you said Modern Pen Company, A. A. Waterman? A. I don't know that it was every time but I always introduced myself as representing that firm.

XQ137. What did you call the pen? A. When I was showing them to you?

XQ138. Yes? A. I would show the pen and tell the number and the price.

XQ139. What did you call it—"Modern Pen Company—
3479 A. A. Waterman"? A. Not every particular pen, no.

XQ140. How would you describe the pen? A. As I have stated before.

XQ141. You have not stated once? A. I have stated that I represented myself to be selling Modern Pen Company pens and A. A. Waterman. It is not necessary in selling a bill of goods to take a pen and say, "This is one of the A. A. Waterman pens. Do you see the name on it?" I did not do that; it was not necessary.

XQ142. What did you call the pen when you talked about it? A. No. 4, No. 12 or whatever it is, 2, 3, 4, 5; $1.50, or whatever the price was.

XQ143. You never mentioned the name of the pen? A. Not
3480 in introducing myself and telling them what I was selling. The name is on the pen. A man could see it.

XQ144. Were you not instructed to talk about the reputation of the pen? A. Certainly.

XQ145. How did you describe the pen when you were talking about its reputation? A. I told them that I had as good a pen as was made.

XQ146. What name did you call the pen? A. Modern Pen Company.

XQ147. And every time—A. Not every pen that I picked up, no.

XQ148. But every time you spoke about the reputation of the pen you talked about Modern Pen Company and A. A. Waterman? A. Yes.

XQ149. Is that the name you gave the pen when you were selling it? A. That is the name; that is the name I introduced myself by—that firm.

XQ150. Have you not some trade name that you usually use in speaking of these pens? A. Some of them were branded A. A. Waterman and some of them Modern Pen Company. If it was Modern Pen Company, self-filler, middle joint, I call it Modern Pen Company. If it was a low joint I would call it A. A. Waterman.

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XQ151. What name did you give this pen when you were describing it and talking about its reputation? A. If I was showing him a self-filler I would say "This is a self-filler." If I was showing him a middle joint I would say it was a middle joint, Modern Pen Company.

XQ152. What did you do with the self-filler? A. Called it Modern Pen Company's self-filler.

XQ153. Did you not call them Waterman pens in talking of them? A. No, certainly not. This is an A. A. Waterman. You could call it a Waterman if you wanted to. The name was on there; it shows for itself.

XQ154. Didn't you do it as a matter of fact? A. Not in introducing myself, no.

XQ155. Didn't you do it in talking about the pen? A. No. 3483

XQ156. Didn't you say, "This is a Waterman"? A. An A. A. Waterman pen, yes.

XQ157. When you spoke about the reputation of the pen didn't you say the Waterman pen had a good reputation? A. I said our pen is as good a pen as is made.

XQ158. And you call it a Waterman pen in doing so? A. I might have, yes.

XQ159. Were you in Newark, Ohio, during the last month? A. This last month?

XQ160. Yes? A. No.

XQ161. I mean during the month of February? A. No.

XQ162. The month of January? A. No.

XQ163. The month of December last? A. No. This year you mean 1911?

XQ164. December, 1910? A. No.

XQ165. When were you last in Newark? A. August or September?

XQ166. Is that the last trip you made through that country? A. Newark, Ohio, you mean?

XQ167. Yes, Newark, Ohio? A. Yes.

XQ168. When were you last in Marion, Ohio? A. Last fall.

XQ169. Have you not made any trip through Ohio? A. Not this year, for this company, no. I did make some towns
3485 in Ohio this year for this company, yes.

XQ170. Were you in Zanesville, Ohio, in the present year? A. No, sir.

XQ171. Didn't you call on Mr. Bauer of Zanesville, Ohio? A. I think not. What month was it?

XQ172. January? A. No, sir, I did not.

XQ173. When did you last call on Mr. Marquart, Crestline, Ohio? A. In August, I think, July or August.

XQ174. How did you introduce yourself to him? A. In the usual way.

XQ175. Didn't you tell him you were selling Waterman pens? A. A. A. Waterman yes.

XQ176. Didn't you say you were selling the Waterman pen?
3486 A. No, sir.

XQ177. Did you sell him any goods? A. I don't remember whether I did or not. I sold two or three dealers there but I don't remember whether I sold him or not.

XQ178. Did you call on Mr. Pfleuger in Crestline, Ohio? A. I think I did. I called on several. I don't remember the names.

XQ179. What did you tell Mr. Pfleuger? A. As stated before.

XQ180. Did you hand him a card? A. I don't remember whether I did or not.

XQ181. Didn't you tell Mr. Pfleuger you were selling Waterman pens? A. A. A. Waterman, yes.

XQ182. Did you ever go into a store yet that you said that you represented the Modern Pen Company? A. Did I ever go into a store?

XQ183. Yes? A. And say I was selling A. A. Waterman, Modern Pen Company? Modern Pen Company pens, A. A. Waterman, New York.

XQ184. Did you always put "Modern Pen Company" in front of the "Waterman"? A. Not always.

XQ185. As a matter of fact, you would seldom if ever do it? A. In a majority of times.

XQ186. And say you represented the Modern Pen Company? A. Modern Pen Company, A. A. Waterman & Company, New York; or A. A. Waterman Pen Company, New York. 3488

XQ187. When were you last in Mount Vernon, Ohio? A. I never was there.

XQ188. Steubenville, Ohio; when were you there last? A. I never was there.

XQ189. Didn't you call on Mr. Erwin? A. I did not.

XQ190. Of Erwin & Robinson? A. I did not, I never was in Steubenville in my life.

XQ191. Are you the only man who was covering the Ohio territory during the last year? A. I don't know.

XQ192. For A. A. Waterman? A. I think I was—from New York. Probably A. A. Waterman of Chicago might have had a man in there.

XQ193. Do you remember of anybody else representing the A. A. Waterman Company that was in Ohio during the last month or two months? A. I don't know who they have got covering the territory now. 3489

XQ194. Who was covering it in December, 1910? A. I was there.

XQ195. Were you in Ohio in December, 1910? A. I think not, no, sir. I was not.

XQ196. When were you last in Michigan representing this company? A. August or September? I don't remember the date.

XQ197. Did you go to Ishpeming? A. No.

XQ198. Up in the northern peninsula? A. I never was there.

XQ199. Are you the only man representing the A. A. Waterman Company that was in Michigan? A. No.

XQ200. Who else was there? A. Mr. Rightmire covered part of Michigan.

XQ201. What part of Michigan did you cover? A. Most of the state, except a few of the larger towns.

XQ202. Were you in Port Huron? A. I never was in Port Huron in my life.

XQ203. Detroit? A. I have been in Detroit but never worked it.

XQ204. In Mount Clemens? A. Yes.

3491 XQ205. Who did you call on in Mount Clemens? A. Schweitzer Bros. I believe some drug company, I don't remember. I sold two bills there.

XQ206. When did you call on them? A. In August or September.

XQ207. How did you introduce yourself to Mr. Schweitzer? A. As H. C. Bartlett.

XQ208. Did you give him a card? A. It was not necessary. He knew us, was acquainted with us, handled our goods for years.

XQ209. Did you ever give him any instructions as to how he should sell these pens? A. Mr. Schweitzer?

XQ210. Yes? A. No, sir, he was handling them for years.

3492 XQ211. Did you tell him he should sell them as A. A. Waterman pens? A. No, sir, I did not.

XQ212. Did you tell him he should not sell them as Waterman's? A. No, sir, I did not give him any instructions because he handled our pens a number of years. I don't remember whether he handled anybody's else or not but he was very enthusiastic over our line.

XQ213. Do you know how he sells the pens to the public; did you ever inquire from any dealer how he sells the pens to the public? A. No, sir, it is none of our business.

XQ214. You never gave him any instruction as to how he should sell the pens to the public? A. New customers, yes.

XQ215. When were you last in Decatur, Ill.? A. I don't know whether it was in November; I think it was.

XQ216. November, 1910? A. Yes.

XQ217. Whom did you call on in Decatur? A. All the dealers there mostly.

XQ218. Can you name some of them? A. I recall one name, Armstrong.

XQ219. Did you sell Mr. Armstrong any pens? A. Yes, I sold him a dozen or so dollar pens with no name on except Federal.

XQ220. Did you call on Mr. Wilder? A. Where?

XQ221. In Decatur? A. Yes.

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XQ222. What did you say when you called on Mr. Wilder? A. I had quite a talk with Mr. Wilder about the L. E. Waterman Company and the Chicago A. A. Waterman pens and our pens.

XQ223. Did Mr. Wilder ever ask you who A. A. Waterman was? A. He did not. He seemed to be very well acquainted with the gentleman, as well as L. E. Waterman. He carries quite a nice stock of L. E. Waterman pens.

XQ224. What Mr. Wilder are you talking about? A. He is a book man, isn't he?

XQ225. No, I refer to the firm of Wallender, Wilder & Malles, printers and printers' supplies? A. I don't think I ever called on them.

XQ226. Yes you did? A. No. I don't think I ever called on anybody—I don't think I ever called on them.

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XQ227. You sold them four dozen pens? A. I did not. I never sold four dozen pens in that town in my life. I never sold anybody there only Armstrong.

XQ228. Are you the only person that was working that territory for A. A. Waterman Company of New York at that time? A. Yes. Quite a number of Chicago Waterman pens were there. May be that is the one you have in mind.

XQ229. No, these are New York pens, because I bought one of them? A. Look and see if it does not say Chicago?

XQ230. I bought it in March this year? A. That is a different proposition. You bought it out of a window where he had a sale on, didn't you?

XQ231. No. Didn't you call on a man named Williams, an optician? A. No, sir.

XQ232. Did you ever call on him? A. No, sir.

XQ233. Was he not down on your list? A. No, I had no list.

XQ234. What system do you have in reporting to your concern? A. I don't make any reports.

XQ235. Don't you tell them who you call on? A. No.

XQ236. Never report who you see? A. No.

XQ237. In any town? A. No.

XQ238. Never have any list of the A. A. Waterman & Company, New York customers in any town? A. I had a list several years ago but I never carry it with me. When I go into a
3497 town I work the town and call on everybody there that I think I can sell pens to.

XQ239. And you did not call on Mr. Williams? A. No.

XQ240. Did you call on a man named Frisson? A. I might have. I don't remember. I never sold but one man in Decatur and that was Armstrong.

XQ241. How about Bloomington, Ill.? A. I never sold a pen in Bloomington that I know of. The company might have sold some there but I never did.

XQ242. Do you say you did not make Port Huron, Mich.? A. I never was in Port Huron in my life.

XQ243. When were you last in Mattoon, Ill.? A. November, I think.

3498 XQ244. Whom did you see there? A. I saw most of the dealers there. The Mattoon News Company and a drug firm there and a jeweler.

XQ245. Did you call on a man named J. J. Smith in the Post Office Building? A. The Mattoon News Company, yes.

XQ246. Did you sell him any pens? A. I sold him a bill of pens and took up a lot of Parker pens.

XQ247. How did you introduce yourself to Smith? A. I told him my name and whom I represented.

XQ248. Did you give him a card? A. I don't remember whether I did or not. That was a couple of years ago.

XQ249. No, just this last November? A. No, it was not this last November when I sold him.

XQ250. You called on him last November? A. Yes.

XQ251. Did you give Smith any instructions as to how he should sell the pens to the public? A. No, sir, it was not necessary.

XQ252. Didn't you tell him to sell those pens as Waterman pens? A. No, I never told a man like that.

XQ253. Didn't he ask you whether you were selling those pens to the public as Waterman pens? A. No.

XQ254. Who was the jeweler that you called on in Mattoon? A. I don't remember his name. He was an old customer. He has handled our pens for years and he understands the difference between the two pens too. 3500

XQ255. Was it not a pawn broker named Welch? A. Welch is the name I think. He is a jeweler and a pawn broker; also Mayor of the city.

XQ256. How did he introduce himself to you? A. I told him my name was H. C. Bartlett of the A. A. Waterman Pen Company and I wished to place our pens. They are the best pens in the world. He would not have anything else. I sold him. I sent him a lot of pens and had them repaired and cleaned up.

XQ257. Did you tell Mr. Welch how he should sell the pens to the public? A. It was not necessary for he had been handling them for years. 3501

XQ258. Did you tell him that he should not sell these pens as Waterman pens? A. No.

XQ259. Who else did you call on there? A. I sold a druggist near the hotel there. I don't remember the name.

XQ260. Don't you have any list or memorandum of those on whom you call? A. I have no list. I am not with these people now. I turned the list back to them.

XQ261. Did you have a list? A. I had my own list.

XQ262. Have you got that? A. Probably they have. It is not my property.

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XQ263. That contained a list of the people you called on? A. A list of the customers, yes.

XQ264. Would that list refresh your recollection as to whom you called on? A. If I had it, yes.

XQ265. Could you produce it? A. No, sir, not for several days.

XQ266. Can you produce it then? A. Yes.

XQ267. Don't you remember this man's name that you called on in Mattoon? A. The druggist, no.

XQ268. It was on the corner from the hotel? A. Yes, next to the hotel, an old customer; he had handled the pens once before.

3503 XQ269. Didn't you have some conversation with him? A. Yes.

XQ270. As to who A. A. Waterman was? A. Yes.

XQ271. What did you tell him—what did you say? A. That he was not connected with this Waterman at all, that he was connected or had been with a concern in Chicago. He said he knew that; he was aware of that.

XQ272. What did you tell him as to the relationship of the L. E. Waterman Company? A. I told him they were no relation that I knew of.

XQ273. Didn't you tell him he was a brother? A. I did not; he did not ask me.

XQ274. Didn't you tell him he had quit the L. E. Waterman
3504 concern because he had difficulty with L. E. Waterman about making self-filling pens? A. No, sir. He possibly got that information from the Chicago people.

XQ275. You sold him some pens, though didn't you? A. Yes, I sold him two dozen pens.

XQ276. He still has them? A. Yes, he is very well pleased with them.

XQ277. Did you call on anybody in Shelbyville? A. Yes.

XQ278. When were you last there? A. I think November.

XQ279. Whom did you call on there? A. All the dealers there, several of them.

XQ280. Do you remember any of the names? A. I don't remember the names? I had several customers there.

Q281. Did you tell any of these people how they should sell pens? A. No, it was not necessary. I think that several of the dealers there that handled our pens handle L. E. Waterman's pens.

XQ282. When were you last in Peoria? A. I never was in Peoria in my life.

XQ283. In Springfield, Ill.? A. About a year ago.

XQ284. Whom did you call on in Springfield? A. All the dealers there.

Mr. Bacon: I object to all this inquiry. It has gone far enough.

XQ285. Did you call on a druggist named Cobb in Springfield? A. A German on the corner, yes. 3506

XQ286. How did you introduce yourself to him? A. I told him who I was and whom I represented.

XQ287. How did you do it? A. I told him my name was H. C. Bartlett, A. A. Waterman Company, Modern Pen Company, New York.

XQ288. Didn't you tell him you were selling Waterman pens? A. No, only A. A. Waterman and Modern Pen Company.

XQ289. Where else did you go on that trip? A. All over that part of Illinois, into Missouri. I will state the conversation that I had with Mr. Cobb. He told me he did not think he was in the market for fountain pens, that he handled the Loughlin and the Sterling. I told him the Sterling was as good a pen 3507
as was made; that we had practically the same thing, a middle joint pen. He looked the pens over and compared them and asked me the question if I thought that my pen was as good as the Sterling I told him I thought it was but I didn't think it was any better and at that he says, "You are an honest man, I will give you an order."

XQ290. And you sold him a dozen and a half pens? A. A dozen and a half or two dozen, I don't remember which.

XQ291 Did you tell him how to sell those pens to the public? A. I showed him the working of the self-filler and the middle joint.

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XQ292. Did you tell him the name that they were to be sold as? A. It was not necessary.

XQ293. What did you tell him with reference to selling these pens to the public, how we should call these pens? A. I never instructed a man as to how he shall sell his own goods. That is not necessary. He knows what he buys and it is his business as to how he will sell them.

XQ294. What did he call them when he spoke of them to you? A. He said he knew it was a good pen, he had one himself.

XQ295. Didn't he call them Waterman pens in speaking to you? A. I don't remember whether he did or not. I don't

3509 think he mentioned the name at all.

XQ296. How do most of these dealers talk of the pen to you—a Waterman pen? A. They say, "Is this as good a pen"—

XQ297. Answer my question. Do they call them Waterman pens in speaking of them to you? A. Some of them call them A. A. Waterman; some call them Modern.

XQ298. Don't they call them Waterman pens? A. Once in a while, yes.

XQ299. Do they describe them? A. It is not necessary to describe them for they are Waterman pens.

XQ300. You never tell them not to sell them that way to the public do you? A. No, because they are Waterman pens, and should be sold as Waterman pens but not as L. E. Water-

3510 man pens or Ideal Waterman pens. I always tell them never to buy and sell our pens on the reputation of the L. E. Waterman pens; if they do they will starve to death.

XQ301. When were you last in Grand Rapids? A. Last summer some time; August, I believe.

XQ302. Whom did you call on in Grand Rapids? A. Several of the dealers there.

XQ303. Can you give their names? A. No, sir, I cannot.

XQ304. Don't you know your trade in Grand Rapids? A. I cannot remember a thousand or two names.

XQ305. Could you if you had a list? A. If I had a list, yes, I could tell. We will furnish you with a list if you want.

XQ306. Did you ever work St. Louis? A. No.

XQ307. When were you last in Bucyrus? A. Last August or September.

XQ308. Whom did you sell in Bucyrus? A. One or two I believe. I don't remember the names.

XQ309. Don't you remember whom you sold in Bucyrus? A. No, sir; I don't remember the names.

XQ310. You cannot remember anybody at all that you saw in Bucyrus? A. No.

XQ311. Where did you go from Bucyrus? A. I don't remember.

XQ312. Would this list refresh your recollection? A. Yes. I don't know that it is necessary, as to what towns I made after I left Bucyrus. 3512

XQ313. Did you go to Galion, Ohio? A. I did.

XQ314. Whom did you sell in Galion, Ohio? A. I don't remember the names.

XQ315. Whom did you see in Galion, Ohio? A. I saw dealers.

XQ316. How did you introduce yourself to the dealer? A. As I stated before.

XQ317. Did you leave cards in Galion, Ohio? A. I may have, yes.

XQ318. You don't remember anything at all about Galion? A. I remember I sold one or two bills there.

XQ319. You don't remember who you sold? A. No. 3513

XQ320. Do you remember any conversation that you had with anybody there? A. The usual conversation.

XQ321. When were you last in Mansfield, Ohio? A. July and August.

XQ322. Whom did you see when you were in Mansfield? A. The dealers.

XQ323. Do you remember anybody that you saw there? A. Hurst Bros. I think it was, our regular customer there. I sold him a nice bill of goods.

XQ324. Did you tell them how to sell these goods to the public? A. No, it was not necessary; they had been selling them for years.

XQ325. How did they speak of the pens to you? A. They said it was the best pen they ever saw.

XQ326. Did they call it a Waterman pen? A. I don't think they called it by any name at all.

XQ327. Don't you know they always speak of these pens as Waterman pens? A. No, I do not know.

XQ328. Didn't they speak of them in that way? A. No.

XQ329. When were you last in Shelby, Ohio? A. July or August.

XQ330. Whom did you see there? A. The dealers.

XQ331. Can't you recall any name? A. I don't remember now.

3515 XQ332. Did you see a man named Kuhn there? A. I don't remember whether I did or not.

XQ333. A druggist? A. I don't remember. I don't remember whether I sold anything in Shelby or not. I don't believe I did.

XQ334. When were you last in Fort Wayne, Ind.? A. I don't work Fort Wayne.

XQ335. Were you not in Fort Wayne last October? A. I might have been there but I don't work Fort Wayne. I think that belongs to Rightmire.

XQ336. Logansport? A. I don't work Logansport.

XQ337. Lafayette? A. I was there in October or November.

XQ338. Whom did you see in Lafayette? A. I don't work Lafayette.

3516 XQ339. When were you last in Kokomo, Ind.? A. Last October and November.

XQ340. Whom did you see in Kokomo? A. Dealers.

XQ341. Don't you remember any names? A. No.

XQ342. Did you sell anybody there? A. I don't believe I did. I am not positive; I can't remember.

XQ343. When were you last in Newcastle? A. Last October and November.

XQ344. Whom did you see in Newcastle? A. Dealers.

XQ345. Do you remember any names? A. I don't remember the names, no.

XQ346. Do you remember seeing Mr. Buhrman? A. Yes.

XQ347. What conversation did you have with him? A. As I stated before.

XQ348. What was it? A. I introduced myself in the usual way. The last time I was there—do you want the last time I was there?

XQ349. Yes? A. The last time I was there I went in and spoke to him and he remembered me. I asked him how he was getting along with A. A. Waterman self-fillers. He said not at all; he said he had two or three of them there that the caps were broken off and he wanted to know if he could send them in. I told him I would take them in or he could send them in. He said he would send them. I tried to sell them and he said no 3518
he had too much trouble with the self-fillers and he took in a line of Parkers' and L. E. Waterman's.

XQ350. Did he tell you that he had L. E. Waterman pens? A. Yes.

XQ351. Did you see any L. E. Waterman pens there? A. I believe I saw a few there. I am not positive about that. I was not looking for them.

XQ352. What did you tell him about those? A. I told him I was sorry he had trouble with the pens and we would try to rectify it; any complaints that he had we would try to make them good.

XQ353. Did you tell him how to sell these pens to the public, under what name they should be sold? A. No, it was not neces- 3519
sary.

XQ354. Did you explain to him the difference between A. A. Waterman & Company and the L. E. Waterman Company? A. I did.

XQ355. What did you say? A. As I said before, he asked me if he could get our pens from the jobber. I told him he could but he could get them from us cheaper than he could get them from the jobber. He said no; and he got McClurg's catalogue and found our pens in the catalogue and I figured the price and discount with him and convinced him that he could buy our pens for less money by buying them direct. I told him he could buy the L. E. Waterman pens from Montgomery Ward and

3520 showed him Montgomery Ward's catalogue, where they had them catalogued and the price.

XQ356. Did you tell him he could buy L. E. Waterman pens at Montgomery Ward's at a discount? A. I did not, because they sell their goods net and the net price was in their catalogue.

XQ357. Did you tell him those prices were less than the full retail price of the pen? A. No, I told him I thought they were a li[illegible] bit more. The numbers were different.

XQ358. I see you refer in your letter of March 28th, to the fact that Messrs. Thompson & Huskins of De Queen, Ark., have sent back some pens? A. Yes.

3521 XQ359. Stating that they had thought when they purchased the pens that they were buying the Waterman Ideal pen. Did you have many cases of this kind? A. Very few.

XQ360. How many have you had during your experience? A. All that have been reported to me, I guess probably a dozen, in three years.

XQ361. Can you give the names of these people? A. I cannot, no, sir.

XQ362. Do you remember any of them? A. No, except those that you have just mentioned.

XQ363. Don't you remember any others at all? A. Mr. Baker, Allegan, Michigan.

XQ364. Do you remember any other? A. I don't think I can remember any others. I don't pay any attention to those things.

3522 It is not my part of the business.

XQ365. Have you any memoranda of those cases? A. No, sir, I don't keep any memoranda at all.

XQ366. Are they not contained in this list you have? A. No.

XQ367. Are they not mentioned in the correspondence which you have with the company? A. They always notify me, yes, but I have not that correspondence.

XQ368. Did you ever go to see these people again? A. Yes, and I have sold some of them.

XQ369. In this case of Thompson & Huskins did you explain to them the difference between these pens? A. I did.

XQ370. What did you say to them? A. I showed them the pen, explained to them the workings of it, in the usual way and sold them as far as I remember about three dozen pens and gave them the exclusive agency of the town.

XQ371. What did you explain to them about A. A. Waterman & Company? A. I told them that was the company I represented and they were located in New York.

XQ372. Didn't they ask you whether that was a genuine Waterman pen? A. Yes.

XQ373. What did you tell them? A. I told them it was a genuine A. A. Waterman, yes.

XQ374. Did you tell them it was a genuine Waterman pen? 3524
A. Yes. It is.

XQ373. And they purchased the pens? A. I told them they were A. A. Waterman pens and they bought them, but not an L. E. Waterman pen.

XQ376. Did you explain the difference between the two pens to them? A. They asked if we did any advertising. I told no, sir, that we sold our pens on their merit and not on the reputation of the L. E. Waterman pen, but that the L. E. Waterman pen was a good pen and gave satisfaction.

XQ377. Don't you find among the dealers that they all know the name of Waterman in connection with fountain pens? A. Quite a good many of them, yes.

XQ378. Don't they all? A. Not all of them, no. I find lots 3525
of them that never heard of them.

XQ379. Then what do you do when you find a dealer who has never heard of the name Waterman in connection with fountain pens? A. I show him the pen and try to sell them.

XQ380. What do you tell him? A. I tell him I am selling A. A. Waterman pens.

XQ381. Do you explain the difference? A. No, because I am not advertising L. E. Waterman pens. I am selling A. A. Waterman pens on its merit.

XQ382. You don't tell them there is another? A. I do not unless they ask me.

XQ383. If they ask you what do you tell them? A. I tell them that it is supposed to be the largest pen factory or as-

sembler in the country, that they make that claim and that they have a good pen.

XQ384. Did you not find so much of this confusion in the minds of dealers as to the difference of A. A. Waterman & Company and the L. E. Waterman Company that you wrote this letter of March 4, 1909? A. I did, yes.

XQ385. You find that confusion wherever you go don't you? A. Not every place, no.

XQ386. Almost every place? A. We find very little confusion. A majority of the dealers know the difference.

XQ387. You yourself did not know the difference when you wrote this letter of April 4th? A. I knew there were two firms.

3527 XQ388. What did you write this letter for? A. Because I did not know their connection. I asked in the letter what relation they were. I did not know. I asked for the information and got it.

XQ389. Did you think that the A. A. Waterman & Company was a subsidiary company or connection of the L. E. Waterman? A. I did not think they were connected, no.

XQ390. But you did not know? A. I knew they were not connected in a business way but I did not know whether they were brothers or cousins or what. That is the question that I was asking. I was advised that they were not.

XQ391. Didn't you ever tell anybody that they were brothers? A. No, sir. I have been asked that question many times. Until

3528 I got the information that they were not I told them I did not know; they might be, I didn't know. After I got the information I told them they were not brothers.

XQ392. How about this case in Tulso, Oklahoma? A. I don't think that has any connection with the L. E. Waterman Company. That is A. A. Waterman of Chicago, is it not?

XQ393. No? A. I think that correspondence is all about the Chicago office. I don't think it has anything to do with the New York office at all; A. A. Waterman of Chicgao.

XQ394. You had better read that (handing witness the paper)? A. I remember that now. There is further correspondence about the Chicago Waterman, from the same man. I re-

member this gentleman writing that letter and in reply to his letter he was advised that it had no connection whatever with L. E. Waterman and then he in reply to that letter—

XQ395. Wait a moment. I don't want to get what you think is in the letter. I want the letter produced? A. Mr. Geyer will produce the letter. That is the letter he wants. That is a very important letter.

Mr. Bacon: What is the date?

Mr. Raymond: September 7, 1909.

XQ396. Don't you think it is remarkable that you should have this confusion in the minds of these dealers that you go to see as to the distinction of A. A. Waterman & Company and L. E. 3530
Waterman? A. The majority of the dealers know that there are two Watermans. Some of them claim there are three. There is an A. A. Waterman in Chicago and one in New York; and an L. E. Waterman in New York.

XQ397. And do you keep it clearly before the dealer which one you represent? A. I positively do, yes.

XQ398. Don't you ever describe yourself as selling Waterman pens? A. Nothing only A. A. Waterman.

XQ399. When you went to Allegan, Mich., and saw Mr. Baker what did you tell him about the pens that you were selling? A. I told him I was selling the A. A. Waterman pen of New York and gave him my card and showed him a catalogue. As well as I remember he got some L. E. Waterman printed 3531
matter and talked it all over.

XQ400. Did you explain to him the difference? A. I did.

XQ401. Didn't you tell him they were just the same? A. No, sir, I did not. I positively did not. I told him we did not sell our goods on the reputation of L. E. Waterman.

XQ402. Did you tell him that this concern had no connection whatsoever with L. E. Waterman? A. I positively did, yes.

XQ403. Didn't you describe these pens to him as Waterman pens? A. As A. A. Waterman pens, yes.

XQ404. Didn't you call them Waterman pens? A. I might have; I possibly did. I had a right to. They are Waterman pens.

XQ405. As a matter of fact you cannot help but call them Waterman pens when you are talking of them? A. If you don't call them Waterman pens you misrepresent them. They are Waterman pens—A. A. Waterman.

XQ406. That is the way you naturally speak of them, "Waterman pens"? A. No, sir, not always. If it is a self-filling pen we call it a Modern A. A. Waterman Company. If it is a middle joint I call it a Modern A. A. Waterman.

XQ407. Don't you call them Watermen pens when you talk about them for any length of time? A. Not always, no.

XQ408. Sometimes you do? A. Sometimes I do. I call them A. A. Waterman pens.

3533 XQ409. I mean just call them plain Waterman pens? A. I call them by their name.

XQ410. Don't you talk of them among yourselves, to your salesmen, as Waterman pens? A. We very seldom talk about pens. I don't remember talking to any salesman and calling them Waterman pens.

XQ411. Do you talk to Mr. Geyer about them as Waterman pens? A. No.

XQ412. When you were in Holland, Mich., and you called upon Mr. Brink how did you describe the pens to Mr. Brink? A. As A. A. Waterman pens.

XQ413. Didn't you call them Waterman pens, to Mr. Brink? A. No. A. A. Waterman or Modern.

3534 XQ414. Are you sure you did not talk to them about Waterman pens? A. Yes, only as before stated.

XQ415. You did not give him any instruction as to how he should sell those pens? A. He knew the pens.

XQ416. I ask you whether you gave him any instructions? A. As to how he should sell them?

XQ417. Yes? A. No, that is unnecessary.

XQ418. You called them Waterman pens didn't you when you were there? A. A. A. Waterman, yes.

XQ419. Didn't you call them Waterman alone? A. No.

XQ420. Without any initials? A. No.

XQ421. You will swear to that? A. Yes.

XQ422. There was not one time when you called them Waterman pens? A. No.

XQ423. How many times did you see Mr. Brink? A. Once.

XQ424. Is that the only time you ever saw him? A. That is the only time I ever saw him in my life.

XQ425. This time when you called on him and sold him a bill of goods did not Mr. Brink call them Waterman pens to you in speaking of them? A. I don't remember whether he did or not.

XQ426. If he did, did you correct him? A. No, sir, because he had a right to call them Waterman pens.

XQ427. And that is the position that you always take with all your dealers? A. How do you mean? 3536

XQ428. That they have a right to call them Waterman pens? A. Yes, they have a right to call them Waterman pens if they want to.

XQ429. And you do not correct them? A. If they call them Ideal Waterman I do.

XQ430. And if they call them Waterman pens you do not? A. No.

XQ431. And you leave them under the impression that that is the proper name for the pen? A. Yes, it is; A. A. Waterman, yes.

XQ432. I mean Waterman alone? A. They have the right to call them Waterman pens because it is a Waterman pen.

XQ433. And you leave them under that impression? A. Yes. 3537
That is exactly what I am selling, but not an L. E. Waterman.

XQ434. Just a Waterman? A. A. A. or Modern Pen Company.

XQ435. No, just the Waterman? A. No, I understand that they have got to inquire because if they call for a Waterman pen; they would not know what it is because there is no Waterman pen.

XQ436. Don't they call them Waterman pens? A. Possibly some of the dealers do. I don't know.

XQ437. Have they not ever called them Waterman pens to you? A. Not that I know of, no.

3538 *Harry C. Bartlett, Jr.*

XQ438. You never heard a dealer say, "I have a Waterman pen"? A. Yes, I have heard them say, "I have an Ideal Waterman."

XQ439. Did you ever hear them say, "I have a Waterman pen"? A. I don't know that I ever did, no.

XQ440. Did you ever have any talks with Mr. Chapman? A. No.

XQ441. The only one that you ever had any conversations with in the Modern Pen Company is Mr. Geyer? A. Yes, he is the only one.

XQ442. Whom did you call on in Delaware, Ohio? A. Sells Bros., I think, or one of the firm.

3539 XQ443. Is that the only concern? A. And Wells & Hardin.

XQ444. Did you have any conversation with them? Whom did you see? A. I sold Wells & Hardin.

XQ445. Whom did you see? A. I don't know the gentleman who bought them. He did not tell me his name.

XQ446. How did you introduce yourself there? A. The usual way.

XQ447. Did you say, "I am selling Waterman pens"? A. I said, "I am representing the Modern Pen Company A. A. Waterman, New York."

XQ448. Did you show your samples? A. I did.

XQ449. Under what name did you talk of the pens? A. A. A. Waterman.

3540 XQ450. Did you say "Waterman pens"? A. No.

XQ451. Didn't you use the word Waterman alone at any time during your conversation with this gentleman? A. With Mr. Wells?

XQ452. No, Mr. Hardin? A. No.

XQ453. Or Mr. Wells? A. No, sir.

XQ454. Will you swear you did not use the word Waterman alone? A. Yes.

XQ455. Did you tell them how to sell these pens, under what name to sell them? A. Yes.

XQ456. What name did you tell them to sell them under? A. The pens he bought, he bought Safety; A. A. Waterman Modern Safety.

XQ457. Did you tell him how to sell those pens, under what name? A. The name was printed of course.

XQ458. Did you tell him he should sell those pens as Waterman pens? A. Not as L. E. Waterman, no.

XQ459. As Waterman? A. He can sell them as that if he wants to but I didn't tell him that.

XQ460. Didn't he ask you that? A. No, he did not.

XQ461. Didn't he show you any proposed advertising of his? A. No.

XQ462. Did he tell you that he previously handled Moore's Safety pens? A. I think he did, also L. E. Waterman.

XQ463. Did he tell you that he handled L. E. Waterman pens? A. Yes, and they did not give satisfaction. 3542

XQ464. Did he tell you that he was a customer of L. E. Waterman Company? A. I don't remember whether he said that or not, but he told me that he had handled Moore's and had handled L. E. Waterman's and that the L. E. Waterman was not satisfactory and the Moore had given him good satisfaction.

XQ465. And he wanted a Waterman pen didn't he? A. He didn't say. I sold them to him. I assumed he did want them.

XQ466. Whom did you see over at Sells Bros.? A. Both of the brothers.

XQ467. What did you say to them when you went it? A. I introduced myself and I think I gave them a card and tried to sell them and they told me they had a large stock of Bolles pens and they could not buy any other pens until they got rid of 3543 those.

XQ468. Did you show them your sample? A. I did.

XQ469. How did you describe the pen to him? A. He asked me if this was the same pen as the L. E. Waterman Ideal Waterman and I told him it was not.

XQ470. How long had you been talking to him up to that time? A. Three or four or five minutes may be.

XQ471. Didn't you say when you went in there to see him that you were selling Waterman pens? A. A. A. Waterman, yes.

XQ472. Didn't you say you were selling Waterman pens? A. No, because there is no such pen as Waterman.

XQ473. You simply said that you were selling A. A. Waterman pens? A. Yes.

XQ474. You never use the name A. A. Waterman Company do you in selling pens? A. Most always, yes.

XQ475. You call them A. A. Waterman pens, don't you? A. Sometimes, yes.

XQ476. You never say A. A. Waterman & Company pens? A. Yes, I have said that.

XQ477. As a general thing in speaking of these pens you do, just as you have done in this testimony, call them A. A. Waterman pens? A. Yes.

3545

XQ478. When you go in to see a man you say, "I am selling A. A. Waterman pens"? A. Yes, Modern Pen Company, A. A. Waterman.

XQ479. You never tell them that you represent the Modern Pen Company which is making the A. A. Waterman & Company pens in selling them? A. Yes, I have done that.

XQ480. Have you ever had any instances where the dealer told you that he did not want your pens? A. Yes, many times.

XQ481. That he thought you were representing the L. E. Waterman Company? A. No.

XQ482. Never had any case of that at all? A. No.

XQ483. You will swear that you never had a case where the dealer told you that he didn't care to talk to you that he thought you represented L. E. Waterman Company when you came in? A. No, I never had a man talk that way to me in my life.

3546

XQ484. When were you last in Lima, Ohio? A. Last August or September.

XQ485. Whom did you call on there? A. All the dealers.

XQ486. Can you remember any name? A. I cannot.

XQ487. Would this list of yours show the names of the dealers? A. I don't know whether it would show the names there because I did not sell anybody there.

XQ488. Didn't you call on a man named Melville? A. I don't remember. I called on dealers there but I don't remember the names.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ489. Did you look over the stock of Sells in Delaware? A. Yes.

RDQ490. Did you not see there in the stock L. E. Waterman goods? A. I don't remember whether I did or not. I believe I did. I am not positive about it. I know I tried to trade them out of the Bolles pens.

RDQ491. After first calling on a customer and telling them that you represent the Modern Pen Company, A. A. Waterman, did you deem it necessary at all times to designate these pens again as A. A. Waterman pens? A. No, sir.

3548

RDQ492. Do all the dealers know all about the controversy between L. E. Waterman Company and A. A. Waterman? A. A majority of them, yes, in Ohio, Michigan, Illinois and Indiana.

RDQ493. And you knew all about this present litigation? A. Yes.

RDQ494. You were advised of the different orders as they were entered? A. Yes.

RDQ495. And had a copy sent to you at once? A. At the end of the month, yes.

RDQ496. And you knew the importance of carefully carrying out the instructions indicated in these court orders? A. Yes.

RDQ497. And you were always very careful to do it? A. I was.

3549

RDQ498. When you spoke of the difference between the A. A. Waterman and the L. E. Waterman pens did you speak of the structure of the pen or the difference between one corporation and the firm? A. The structure of the pen, the working of the pen.

RDQ499. You knew that L. E. Waterman Company was a corporation and that A. A. Waterman & Company was a firm, did you not? A. That is the way I understand it, yes.

RDQ500. And the Modern Pen Company is a corporation? A. Yes.

RDQ501. You did not sell pens exclusively? A. No.

RDQ502. This was only a side issue with you? A. Yes.

RDQ503. What were you selling specially? A. I had a line of cutlery and farm wagons.

RDQ504. And you sold nothing for the Modern Pen Company except pens? A. That is all.

RDQ505. Do you know anything about the sale of pens in Decatur, Ill., in March of last year? A. I think I sold Mr. Armstrong a dozen or so cheap pens.

RDQ506. Do you know of any special sales since then to which Mr. Armstrong may have referred? A. I have not been there since but there has been a sale on in Decatur with a publishing house or news concern there and they had a lot of our
3551 pens in the window with a lot of other pens and I think they have probably been selling them at maybe a reduced price.

RDQ507. Do you know where they got those pens? Did they get them in New York or Chicago? A. They are New York pens.

RDQ508. They did not buy them in New York? A. No, they bought them from a man named Doughty and put them in their store.

Mr. Raymond: I object to this on the ground that it is not shown that the witness has any knowledge of it; it is mere hearsay.

RDQ509. You saw Mr. Raymond on your tour in 1910, this
3552 gentleman here? A. I think I have.

RDQ510. Where did you think you met him? A. I believe I saw him in Delaware and if I am not mistaken in Newcastle. I would not be positive of that because I never met the gentleman.

RDQ511. Did you have any conversation with him? A. I had a conversation with some fellow that looks a good deal like him one time about the difference in the L. E. Waterman and the A. A. Waterman pen.

RDQ512. What did you say and what did he say? A. It came up in this way, he asked me if they were brothers and I told him no. He asked me what connection and I told him none

whatever. He asked whether the pen was as good a pen as theirs and if the trade did not think lots of times when they were buying our pens they were buying the L. E. Waterman. I told him no because we always took pains to tell them they were A. A. Waterman and were not a pen that was advertised and that we never sold our goods on the reputation of L. E. Waterman but sold them on their merit and that the L. E. Waterman was a good pen and there were lots of them being sold and used.

RDQ513. And that our pen was better than his? A. I don't know that I said it was better. I said it was as good.

RDQ514. You heard about Mr. Raymond being over that territory trying to get testimony? A. Yes. 3554

RDQ515. Very often? A. Yes, I have heard he was making a trip over there.

RDQ516. For the purpose of getting testimony? A. Yes.

RDQ517. And that was all in 1910? A. Yes.

RDQ518. Has it been the custom of the L. E. Waterman Company's representatives to follow on behind you and try to kill your orders? A. It seems so.

Objected to.

RDQ519. Have you found such instances? A. I have, yes, where they would come in and say, "Here, you have not bought a Waterman pen at all."

3555

Mr. Raymond: Objected to; there is nothing to show that the witness has any knowledge on the subject; and as hearsay.

RDQ520. That is what the dealers have told you? A. That is what the dealers have told me, a number of them; they say their man would come in and say they had not bought a genuine Waterman pen, that it was not an advertised pen and that they had no right to sell them at all; that they were going to stop them from using it under that name and I don't know what all, a lot of stuff.

Mr. Raymond: I shall want that list.

3556

Mr. Bacon: I am not sure that I have a list.

The Witness: It is a list of the people we sold to.

Mr. Bacon: Do you think you turned it over to the Modern Pen Company?

The Witness, No, I don't think I did. I have only a list of the people that I sold. I have no list of the people that I called on. This is a list of the people that I sold, customers of ours; that is all; that is the only one I have ever had.

By Mr. Raymond:

RXQ521. The list of people that you sold would all be with
3557 the Modern Pen Company, wouldn't they? A. They can give you a list off the books. There is a list in the books of the people I sold. I never keep a list of the people I call on.

RXQ522. When do you think you saw me? A. I think it was along in October or November. I don't know.

RXQ523. October or November? A. Along there I believe.

RXQ524. Would this list show when you were in Newcastle? A. Yes.

Deposition closed.

Signature waived.

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3558 EUGENE FLEWITT, a witness called on behalf of the defendant, being duly sworn, testified as follows:

*Direct-examination by Mr. Bacon:*

Q1. Please state your name, residence and occupation? A. Eugene Flewitt; residence, 533 Manhattan Avenue, New York; business, salesman.

Q2. How long have you been salesman for the Modern Pen Company? A. About four years.

Q3. What region do you cover? A. New York and viciniy.

Q4. When you first became salesman did you have any instruction as to how you should sell these goods; if so, just state

what was told you? A. Nothing except merely that I was to sell the goods as they were marked.

Q5. That is "A. A. Waterman & Co."? A. Yes, "A. A. Waterman & Co."

Q6. And "Modern Pen Company"? A. Yes.

Q7. When you went in to a new man that you had never seen before what did you do? A. I would simply tell him who I represented.

Q8. Did you have a card? A. Yes.

Q9. Did you give him your card? A. In a great many cases; sometimes I did not.

Q10. Have you one of those cards? A. Yes (producing a card). 3560

The card produced by the witness is offered in evidence and marked Defendant's Exhibit A-1.

Q11. Will you give a model conversation, of how you would usually introduce yourself and what you would say concerning the goods? A. I would simply say the firm I represented, the Modern Pen Company or the A. A. Waterman & Co. and try to interest the customer in the line of goods.

Q12. Did you ever sell these goods as "Waterman"? A. No, sir.

Q13. Without the distinguishing mark "A. A."? A. No, sir, never.

Q14. Did you ever mention the Ideal of the L. E. Waterman 3561
Company in comparison? A. Except to compare our goods on the basis of price, that is all; that the A. A. Waterman & Co. goods were a better price, and the same quality as the L. E. Waterman Company goods at a much more expensive price.

Q15. Did you ever try to knock the L. E. Waterman goods? A. No, sir, not that I remember.

Q16. That is not good salesmanship, is it? A. I should not think so.

Mr. Watson: Objected to as leading and the Court's attention is called to the improper form of most of the questions that have already been asked.

3562 *Eugene Flewitt*

Q17. Did you ever sell goods to any man without making him know that they were the manufacture of A. A. Waterman & Co.? A. No, sir.

Q18. Did you ever say anything to them about the way they ought to be sold? A. I have always told them they should sell them as A. A. Waterman & Co. goods.

Q19. Did you ever have any complaint from any of your customers that they thought they were buying L. E. Waterman Company goods when they bought of you? A. No, sir.

Q20. In any single instance? A. No, not in any single instance.

3563 Q21. How do the dealers usually designate these goods? A. They designate them as "A. A."

Q22. Did you know anything about the injunction of September 3, 1898; did anybody ever call your attention to that? A. I heard a little about it, more or less; not very much.

Q23. You never have seen it? A. No, sir, I have never seen it.

Q24. Did you know that under the terms of that decree the A. A. Waterman Company was permitted to sell goods as A. A. Waterman?

Mr. Watson: Objected to as immaterial; the decree speaks for itself, and the statement of counsel is not true.

A. Yes, I knew they were to sell goods as A. A. Waterman

3564 goods.

Q25. What class of stores generally buy of you? A. I sell wherever I can. I go to everybody.

Q26. Generally to high class people?

Objected to as leading.

Mr. Bacon: Question withdrawn. Examination ended.

*CROSS-EXAMINATION by Mr. Watson:*

XQ27. What territory did you say you covered? A. New York and vicinity.

3565

XQ28. Does that include New York City? A. That includes New York City, yes.

XQ29. Does it cover New Jersey? A. Part of New Jersey.

XQ30. The northern part of the State of New York? A. No, I don't go to the northern part of the State of New York.

XQ31. How far up the state do you go? A. New York City.

XQ32. Just New York City? A. New York City.

XQ33. What towns do you visit outside of New York City? A. Jersey City, Newark, Elizabeth, Plainfield, Somerville, Princeton, Rahway, and a few towns down the coast.

XQ34. What stores in New York City have you sold A. A. Waterman & Co. goods to? A. Butler Bros., Charles Broadway Rouse. Do you want a complete list of the customers?

3566

XQ35. Yes? A. Harding & Heale, Singer Bros., Leon Wilder & Sons, Bernard Feldman, A. Harris, S. Harris, J. T. Ehrenberg, Otto Herschman. I guess there are a few others but I cannot just recall them at present.

XQ36. How many of these are wholesale dealers only or jobbers? A. Quite a few of them.

XQ37. Which ones are retail dealers? A. Ehrenberg, Herschman, both the Harrises. But most of the others are jobbers. Harding & Heale is a retailer.

XQ38. Where is their place of business? A. Greenwich Street.

XQ39. Where is S. Harris' place of business? A. S. Harris is on 42nd Street.

3567

XQ40. Whereabouts on 42nd Street? A. 129 East.

XQ41. That is nearly opposite the Grand Central Station is it not? A. Yes, that is near the Grand Central Station.

XQ42. On which side of the street? A. On the north side.

XQ43. How long since you have been in Mr. Harris' store? A. I was in there last Monday.

XQ44. What did you go there for Monday? A. To sell goods.

XQ45. Did you go there to talk to him about the way his customers have testified in this case? A. No.

3568

XQ46. Did you know how customers had testified that they bought pens there in his store? A. I did not say anything about it at all.

XQ47. Nobody told you anything about it? A. Not at that time, not Monday.

XQ48. When did they tell you about it? A. There was not anything particular said about it. He told me that there was a customer came in to buy one of our pens and came back and exchanged it for another one. I don't remember that he stated anything particular about a customer buying any L. E. Waterman pen there because he does not sell them.

3569

XQ49. Mr. Geyer did not tell you anything about the way customers had testified that they had been selling A. A. Waterman Co. goods, did he, before you went up there? A. No.

XQ50. Never has told you anything about how customers said that he represented the A. A. Waterman & Co. goods; Mr. Geyer never told you anything about that? A. About what?

XQ51. Did Mr. Geyer tell you anything about how a customer of Harris' had testified in this suit as to how Harris was representing A. A. Waterman & Co. goods? A. I don't remember that he did, no, because Harris simply sells them as A. A. Waterman & Co. goods and he has a sign out marked "A. A. Waterman & Co."

XQ52. And Mr. Geyer did not say anything about it to you? A. I don't remember.

3570

Mr. Bacon: Objected to as there is no evidence of anybody ever having bought any pen of Harris, in this case.

XQ53. Did anybody connected with the Modern Pen Company tell you anything about the testimony of customers who had bought at a store on 42nd Street or near the Grand Central Depot, A. A. Waterman & Co. goods? A. No, I don't remember.

XQ54. Mr. Bacon never told you anything about it, did he? A. No.

XQ55. He did not tell you that people had testified that they had bought A. A. Waterman & Co. goods on 42nd Street near

the Grand Central Station which were represented to them as Waterman Ideal Fountain Pens?

Mr. Bacon: Objected to as there is no such evidence.

A. There are no goods there represented as Waterman Ideal Fountain Pens.

XQ56. Are you there when Mr. Harris sells to customers? A. I have been there, yes.

XQ57. You are there all the time when he sells to his customers? A. I am not all the time.

XQ58. Then you do not know how Mr. Harris represents the goods to his customers, do you? A. I know how he does it when I am there. 3572

XQ59. How much are you there? A. I have been there two hours at a time in the course of a day.

XQ60. How often? A. Probably once a week.

XQ61. Where is A. Harris' place of business? A. 425 Broadway.

XQ62. Do you know whether S. Harris on 42nd Street has been selling A. A. Waterman & Co. pens as Waterman pens or not? A. No, he does not sell them as Waterman pens. He sells them as A. A. Waterman pens.

XQ63. If he sold them as Waterman pens he would be doing something that he had not any right to, would he not?

Mr. Bacon: That is objected to. That is for the Court to decide and not the witness. 3573

A. I don't see that he would.

XQ64. He has a perfect right to sell them as Waterman pens? A. I don't know why not.

XQ65. And you refer to them when you are talking to customers as Waterman pens? A. I refer to them as A. A. Waterman pens.

XQ66. Don't you refer to them as Waterman pens? A. I invariably refer to them as A. A. Waterman.

XQ67. Have you never referred to A. A. Waterman & Co. pens as Waterman pens, to any dealer? A. No.

XQ68. You never refer to them as Waterman pens? A. No, always stipulate that it is an A. A. Waterman pen.

XQ69. You are always careful to tell a customer that he must sell these as A. A. Waterman pens? A. Yes.

XQ70. Do you tell him that he must not sell them as Waterman? A. I tell him he must sell them as A. A. Waterman.

XQ71. You do not tell him that he must not sell them as Waterman pens? A. To sell them as A. A. Waterman.

XQ72. Do you know whether A. Harris is selling these A. A. Waterman pens as Waterman pens? A. He is selling them as A. A. Waterman pens.

3575 XQ73. Does he sell them as Waterman pens? A. As far as I know he sells them as A. A. Waterman pens. I always told him to sell them as A. A. Waterman pens and I presume that he does.

XQ74. Have you ever seen the catalogue of Butler Bros.? A. Yes.

XQ75. Do you know how they advertise the A. A. Waterman & Co. goods in that catalogue? A. Yes.

XQ76. How do they advertise them? A. It is headed "A. A. Waterman." A. A. Waterman fountain pens.

XQ77. They do not advertise them as Waterman pens?

Mr. Bacon: Objected to as the advertisement is the best evidence.

3576 Mr. Watson: I am testing this witness's knowledge and recollection.

A. In Butler Bros. catalogue the pen is advertised as I remember it as A. A. Waterman Modern Self-filler; and the A. A. Waterman End Joint Pen. I don't just remember; there was a half column and I don't remember how it read.

XQ78. When they use the word A. A. Waterman they use it without "A. A. Waterman & Company" don't they? A. I don't just remember whether it was A. A. Waterman or A. A. Waterman & Co.

XQ79. Do they use them as Waterman pens alone without any initials or "& Company"? A. I think if I remember right,

some four or five months ago in the catalogue they headed it with "A. A. Waterman" and further on down they spoke of it as "Waterman."

XQ80. Then your recollection is that they were selling them as Waterman pens in that catalogue? A. They were selling them as Waterman pens—as A. A. Waterman pens.

XQ81. Do you recall that the name Waterman pens was in large black type in the catalogue?

Objected to as the catalogue is the best evidence.

A. I don't remember now, no. I think the name A. A. Waterman was in black type if I remember right because that headed the pen list. 3578

XQ82. Who gave you the instructions as to how to sell these pens? A. When I first went with the firm, Mr. Martling.

XQ83. Have you had any instructions since that? A. No further instructions.

XQ84. The instructions that you received four years ago are the only instructions that you ever received? A. That is all.

XQ85. Mr. Geyer has never instructed you how to sell these pens? A. He has never instructed me any differently how to sell them. It was always understood the way we were to sell them and no further instruction was necessary.

XQ86. Has he ever further instructed you as to how you should sell these pens? A. He has simply always told me that they were to be sold as A. A. Waterman pens. 3579

XQ87. Mr. Geyer has given you instructions then? A. Further instructions following Mr. Martling.

XQ88. When did he give you these instructions? A. I don't remember—because as a matter of fact I don't remember that he gave me any instructions, because he simply knew that I knew how to sell them.

XQ89. How did he know? A. I should think he would know.

XQ90. How would he know? A. He probably knows what Mr. Martling told me.

3580

XQ91. How? A. What would any firm tell their salesmen?

XQ92. How would Mr. Geyer know how Mr. Martling instructed you to sell these goods? A. I am sure I don't know how he would know it, but I should think he would know it.

XQ93. Do you know that he did know it at all? A. I don't see why he should not know it.

XQ94. How did he know it? A. He is around the office all the time. I should think when we talked it over with Mr. Martling he would know it.

XQ95. As far as you know he did not know anything about your instructions from Martling, did he? A. As far as my personal knowledge is concerned I don't know that he did.

3581 XQ96. And he has never given you any instruction himself? A. I don't remember that he has, any particular instruction.

XQ97. When did Mr. Martling sever his connection with A. A. Waterman & Co. or the Modern Pen Company? A. I should think it must have been two or three years ago.

XQ98. Who has been in charge since Mr. Martling left? A. Mr. Geyer.

XQ99. Who employed you as a salesman? A. Mr. Martling.

XQ100. Have you had any employment since Mr. Martling went away? A. I am still with the company.

XQ101. Any renewal of your employment? A. I am still with the company.

3582 XQ102. For how long a time did Mr. Martling employ you? A. I don't know just how long. I guess it must be about a year and a half or two years. He did not employ me personally; he engaged me for the Modern Pen Company.

XQ103. Were you employed on a salary or on a commission? A. I was employed on commission.

XQ104. No salary at all? A. No salary.

Objected to as immaterial.

XQ105. Did you carry any other line except the pens of the Modern Pen Company? A. No.

XQ106. That was your exclusive employment? A. That was my exclusive employment.

XQ107. And there has been no renewal of your employment since Mr. Martling first employed you? A. There has been no contract from year to year.

XQ108. Who did you make those arrangements with? A. The Modern Pen Company through Mr. Geyer.

XQ109. What was your business before you became a salesman for the Modern Pen Company? A. I was with Howard & Co.

XQ110. In what capacity? A. A salesman.

XQ111. What was your line of business? A. They are jewelers on Fifth Avenue.

XQ112. How long were you with them? A. About five or six years. 3584

XQ113. And prior to that what was your line of business? A. I was with the Gorham Company for about eight years.

XQ114. Just previous to Howard? A. Yes, a little previous.

XQ115. What did you do in between that; anything? A. For a few months I was with Reed & Barton Company, a silver house.

XQ116. How long have you known about Waterman Ideal Fountain Pens? A. I don't know; quite a while I should judge.

XQ117. Fifteen years? A. I guess so.

XQ118. A very well known produce on the market all that time, have they not been? A. Yes.

XQ119. Have you ever traveled any other place for the Modern Pen Company except New York and vicinity? A. 3585 Yes, I used to go a little further from New York about two or three years ago.

XQ120. What territory did you cover then? A. I covered Philadelphia, Baltimore, Washington and a few towns in Pennsylvania. I cannot just mention them all but there were quite a few of them.

XQ121. Did you go into Ohio? A. No.

XQ122. Never sold A. A. Waterman pens in Ohio? A. No. I have been as far as Ohio.

XQ123. Do you cover Brooklyn, N. Y.? A. I cover Brooklyn, yes.

XQ124. Do you know Bulwinkle's stationery store in Brooklyn near the City Hall? A. I have heard of him.

XQ125. Have you ever been in there? A. Yes.

XQ126. Do you know whether they sell Waterman Ideal Fountain Pens there or not? A. They did the last time I was in there. I have not been in Bulwinkle's for quite some time.

XQ127. What is the name of the concern very near there that has a man by the name of Masters in the firm? A. Stevenson & Masters.

XQ128. Do you know that store? A. Yes.

XQ129. Do they sell Waterman Ideal Fountain Pens in that store? A. They sell Waterman Ideal Fountain Pens and some
3587 other pens too.

XQ130. Are those the leading stores in Brooklyn in that line? A. I should judge so.

XQ131. You find the Waterman's Ideal Fountain Pen sold in most of the leading stores in New York and Brooklyn, don't you? A. Yes.

XQ132. And those pens are usually referred to as Waterman pens, are they not? A. As Waterman pens.

XQ133. Do you know the Tiffany Pen Company in this city? A. No.

XQ134. Do you know a dealer by the name of J. Sandusky in this city? A. Yes.

XQ135. Where is his place of business? A. 204 Bowery.

3588 XQ136. Have you ever sold him any A. A. Waterman & Co. fountain pens? A. Yes.

XQ137. When did you first sell him? A. I think it must be about a year ago or a year and a half.

XQ138. Is that the first time he carried A. A. Waterman pens? A. That is the first time he carried them.

XQ139. Did you give him any instructions as to how he was to sell these goods of A. A. Waterman & Co.? A. I did not give him any instructions, no.

XQ140. Do you know any concern trading under the name of Tiffany Pen Company, in New York or Brooklyn? A. No, sir, I don't know of any.

XQ141. You never heard of a Tiffany Pen Company at 22 Thames Street, New York? A. No, sir.

XQ142. Where is the Butler Bros. store? A. 185 Broadway.

XQ143. Harding and Heale's store? A. Greenwich and Liberty.

XQ144. Where is the Singer Bros. place? A. 82 Bowery.

XQ145. Where is Bernard Feldman? A. 94 Forsyth.

XQ146. New York City? A. New York City.

XQ147. Where is Otto Herschman's place? A. 125th Street just off Seventh Avenue. I don't recall the number.

XQ148. Where is Ehrenberg's place? A. 2389 Broadway.

XQ149. Near what Street? A. That is in the eighties; I should say about 88th Street. 3590

XQ150. Are these all stationery stores? A. No, they are not. Ehrenberg and Harding & Heale and Herschman are all stationery stores. The others are dealers and jobbers.

XQ151. Is A. Harris a stationery store? A. A. Harris is simply fountain pens. He don't sell anything else. S. Harris is the same.

XQ152. Do you know a Harris that does business on Nassau Street? A. I know of him, yes.

XQ153. What is his name? A. Mr. J. Harris, I think.

XQ154. Did you ever sell him any fountain pens? A. I never sold him any.

XQ155. Did you ever know of his buying any from the Modern Pen Company? A. Not to my knowledge. 3591

XQ156. Do you sell fountain pens to a man named Carey on Broadway near John Street? A. No.

XQ157. Do you know whether he carries A. A. Waterman & Co. pens? A. He handles them, yes.

XQ158. Where does he get them, do you know? A. He buys them direct.

XQ159. From the Modern Pen Company? A. From the Modern Pen Company, 22 Thames Street.

3592 *Eugene Flewitt*

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ160. What did you say to Mr. Sandusky when you sold him pens? A. I did not say anything particularly. He wrote to the house and the letter was referred to me and I went and sold him the goods.

RDQ161. Did you tell him that you represented the A. A. Waterman Company? A. I told him I represented A. A. Waterman & Company and showed them their letter that they wrote to the firm.

RDQ162. They knew the goods perfectly before you saw them then? A. Yes, they knew the goods; there is no question
3593 about that at all.

RDQ163. Did they know the difference between them and the L. E. goods? A. Yes, certainly.

RDQ164. Is there anybody that you know of in New York that does not know the difference between A. A. and L. E. goods—dealers?

Mr. Watson: Objected to as improper in form and beyond the knowledge of this witness.

A. No. sir.

RDQ165. Have you ever known of a dealer in New York City who as far as you could judge from his conversation did not know the difference between the two? A. I certainly have
3594 not, no. They certainly all know the difference.

RDQ166. That knowledge is universal? A. That knowledge is universal.

RDQ167. Had Mr. Sandusky ever sold L. E. goods? A. That I don't know. I believe he has had a few of them there on occasions. I think he showed me one or two mounted ones once or twice.

RDQ168. Do individuals who carry A. A. Waterman & Co. pens also designate them as Waterman pens? A. I guess they do, yes.

RDQ169. Have you ever heard any complaint made about L. E. Waterman pens?

3595

Mr. Watson: Objected to as not proper re-direct examination.

A. I think I have, yes.

RDQ170. What do you mean by "I think I have"? A. I have heard quite a few complaints about them.

RDQ171. What was the general complaint about L. E. pens? A. The usual complaint, pens leaking.

RDQ172. Where do they leak? A. At the joint.

RDQ173. Under the finger? A. Under the finger.

RDQ174. Did you ever hear of a complaint specially that they leaked when they were only part filled? A. I have heard that complaint, yes.

3596

*RE-CROSS EXAMINATION by Mr. Watson.*

RXQ175. You sell pens of the Modern Pen Company with a joint under the finger, don't you? A. Yes.

RXQ176. You sell a great many of those don't you? A. We sell quite a few.

RXQ177. They have been making and selling those all the time you have been with them? A. Yes.

RXQ178. And are doing it today? A. Still doing it today.

RXQ179. Do those pens ever leak under the joint? A. I don't think there is an end joint made that does not leak once in a while. I think probably the percentage is very largely in our favor as compared with the Ideal pens.

3597

RXQ180. All those pens with the joint under the finger are marked A. A. Waterman & Co.? A. They are all marked A. A. Waterman & Co.

RXQ181. Do you know that Sandusky sold A. A. Waterman goods as genuine Waterman pens? A. As genuine Waterman or Ideal Waterman?

RXQ182. Genuine Waterman pens? A. Sandusky sells them as A. A. Waterman & Co. pens.

RXQ183. He does not sell them as genuine Waterman pens? A. He sells them as A. A. Waterman pens.

3598 *Eugene Flewitt*

RXQ184. Do you know whether he sells them as genuine Waterman pens? A. I don't know.

RXQ185. In your contract with the trade in selling these A. A. Waterman & Co. pens, have you ever heard the term "Genuine Waterman Pen," mentioned by any customer? A. With the trade?

RXQ186. Yes? A. No, they generally discriminate in the matter; L. E. Waterman or A. A. Waterman.

RXQ187. "Genuine Waterman pen" in the trade means L. E. Waterman pens, does it not? A. Not necessarily.

RXQ188. You never heard that expression applied to a genuine Waterman pen? A. I don't see that it is a genuine Water-
3599 man pen any more than the A. A. Waterman pen.

RXQ189. I asked you if you ever heard the expression "Genuine Waterman" applied to L. E. Waterman? A. I have had it referred to as Waterman pen, too.

RXQ190. As a business, coming in contact with the trade, is it not true that the concern whose goods are first in the market are referred to by their trade name, like Faber's pencil and Roger's silver and Waterman's pen, referring to the original concern? A. I don't know that it is, no, because if you buy a Faber's pencil, you don't know whether you are getting a Johann or the other Faber. If you buy Roger's silver, you don't know whether you get Rogers 1847.

RXQ191. If my name was Howard, do you think I ought to
3600 make Howard's watches and sell them as Howard's watches? A. Why not?

RXQ192. Do you think it would be fair, in your opinion as a business man; do you think that would be fair business competition, for me to call my watch a Howard watch?

Mr. Bacon: Objected to, as this witness is not a Circuit Court Judge.

A. I don't see why it would not, if you made an entirely different watch.

RXQ193. It would be a fair business method for me to sell my watch as a Howard watch, substituting them for the genuine

Howard watch, in your opinion? A. No substitution at all; if you made a watch that was different from the Howard watch, I think you could use that name. 3601

RXQ194. If a man came in and asked for a Howard watch, I would be perfectly right in selling him my watch? A. You could tell him that you had two Howard watches and that you were an honest dealer. Any honest dealer would tell a man that.

RXQ195. If he did not tell him that he would be a dishonest dealer, wouldn't he? A. I should think he would.

RXQ196. If a man came in and asked for a Howard watch what would you expect he would get? A. I would expect he would get a Howard watch. 3602

RXQ197. Made by the original Howard Company? A. I don't know whether it was made by the original Howard or not. It so happens that there is only one Howard. You take the case of Faber, where there are three or four Fabers; if a man comes in to get a Faber pencil he will get a Faber pencil, but whether it is A. W. or what it is, he gets a Faber pencil. You would not call that unfair competition, would you—dishonest?

RXQ198. I am asking you whether you would call it dishonest?

Mr. Bacon: Objected to on the ground that neither the witness nor Mr. Watson is a Circuit Court Judge.

A. I certainly would not. 3603

RXQ199. Then I would be perfectly justified, if my name was Howard, in starting to make watches and call them Howard watches and sell them as Howard watches when a man came in and asked for a Howard watch? A. If the watch was different, not the same. If you made exactly the same watch as Howard, but if the watch was different I should think you would be justified in using the name.

RXQ200. If a man came into my store and asked for a Howard watch, I would be justified in passing out one of them as a Howard watch?

3604 *Eugene Flewitt*

Mr. Bacon: Objected to and I move to strike out the answer as the witness is not paid a salary for giving his opinion.

A. I answered that question. I cannot answer it any different.

RXQ201. You think he would be? A. If the watch was different, yes. There is no question about it in my mind.

RXQ202. Do you think that the original Howard Company would be injured by it, as a business man?

Same objections.

A. I don't know. I suppose it might take away a few of their
3605 sales, but of course, none of us can expect to have a monopoly on one particular thing.

RXQ203. If I should start to manufacture a watch under the name of Howard, it being my name—

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial, and repetition upon repetition.

Mr. Watson: Counsel for complainant calls the attention of the Court to the constant interruption of defendant's counsel in the middle of plaintiff's questions and it is impossible to cross-examine this witness in view of these constant interruptions; and directs the Court's attention to the evident intent of counsel for the defendant to prompt this witness.

3606 Mr. Bacon: Counsel for defendant calls the attention of the Court to the fact that this line of cross-examination is not only irrelevant but puerile and any law student ought to know better.

RXQ204. If I should start to manufacture watches under the name of Howard, it being my name, and put them on the market, and customers came in and asked for a Howard watch and the dealer gave him my watch, would you think that was fair competition? A. I answered that question.

RXQ205. Will you answer it again? A. If the watch was different, yes; but if you made one that was exactly like the Howard watch with the idea of selling it for a Howard watch, I

think you would be wrong; but if you made a watch that was different, you could certainly use the name of Howard, I should think.

RXQ206. The same thing would be true of fountain pens, would it not? A. I should judge so.

RXQ207. You, on your direct-examination, stated that you told the trade that the A. A. Waterman & Co. pens were the same as the L. E. Waterman pens, except as to the price; is that so; is that what you testified to? A. When did I say that?

RXQ208. I am asking you if you testified to that? A. I don't remember that I did.

RXQ209. What did you say about your comparisons between the A. A. Waterman & Co. pens and the L. E. Waterman Company pens? A. They are made in the same way. All fountain pens are made in the same way, except some particular thing perhaps that we have a patent on. 3608

RXQ210. Look the same and the same quality? A. Look the same and they are the same quality; only perhaps some will be a little better made than others.

RXQ211. And that the only difference was that there was a difference in the price? A. A difference in the price, yes.

RXQ212. And that dealers get more profit out of the A. A. Waterman Company goods? A. The dealers do get more profit out of the A. A. Waterman & Co. goods.

RXQ213. Did you tell them that they looked the same? A. They look very much the same, except the imprint is different. 3609

RXQ214. The ordinary customer, in looking at the two pens, could not tell the difference, could he? A. If they look at them, they certainly could.

RXQ215. There is no difference in the pens except the imprint? A. The difference is in the imprint.

RXQ216. That is the only difference? A. That is all. If they can read they can certainly tell the difference.

RXQ217. The only difference is in the imprint? A. Yes.

RXQ218. The general appearance of the goods is the same? A. Except the gold pen may be a little different shape, something like that.

RXQ219. To the ordinary purchaser they look the same? A. I presume they would.

3610 *Eugene Flewitt*

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ220. If you were manufacturing a new Howard watch and put in big letters on the face of the watch "A. A. Howard," to distinguish it from L. E. Howard, you would think that you were selling goods properly, wouldn't you? A. I certainly would.

RDQ221. And if the customer who bought your Howard watch understood that he was buying your make and not any other make you would think you were selling the goods properly? A. I certainly would.

3611 RDQ222. Did you ever in your life sell an A. A. Waterman & Co. pen to a man who did not know the difference between L. E. Waterman and A. A. Waterman pens? A. No, sir.

RDQ223. And when you spoke of a different Howard watch you meant such a different appearance that anybody by looking at it could tell the difference? A. Yes, exactly.

RDQ224. Are not the A. A. Waterman under the finger joint pens a very cheap grade? A. They are a cheap pen, yes.

RDQ225. Your high grade pens do not have the joint under the finger where they can make the finger dirty? A. No.

RDQ226. The speciality of the higher grade goods of the Modern Pen Company is the self-filler and the middle joint? A. Yes.

RDQ227. And the L. E. Waterman people do not make any
3612 middle joint pens? A. Not now; no, sir.

RDQ228. And they do not make a self-filler like that of the Modern Pen Company? A. No.

RDQ229. What kind of a self-filler do they have? A. For the last year or so I think they have had a self-filler with a rubber sack that opens in the middle. You turn it around and press the inside.

RDQ230. A bar that presses down on the side? A. Yes.

RDQ231. And a knob that sticks out on the side of the pen? A. Yes.

RDQ232. And the specialty of the plaintiff is a pen with a joint under the finger? A. Yes.

RDQ233. Their high grade pens are made that way? A. Yes.

RDQ234. And pens have been made that way for many years? A. Yes.

RDQ235. And the specialty of the defendant is the middle joint and the self-filler? A. Yes.

RDQ236. And do the plaintiff make any pens that compare in workmanship and design with the defendant's self-filler?

Objected to as this witness has no knowledge as to the matters inquired of.

A. No, sir.

RDQ237. Have you handled a great many L. E. Waterman pens? A. I have handled quite a few; not to say a great many; I have handled quite a few of them. 3614

RDQ238. You know the difference in construction? A. I know the difference in construction. There is a difference in the construction of the self-filler.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ239. You never have had anything to do with the manufacture of fountain pens? A. I have not manufactured them, no.

RXQ240. You never had anything to do with the manufacture of fountain pens? A. No, except I have seen a great many of them made, in the shop.

RXQ241. What price do the A. A. Waterman & Co. pens, the self-fillers, sell for at retail? A. $2 and up. 3615

RXQ242. What is the price of the middle joint pens of A. A. Waterman & Company at retail? A. $2 up.

RXQ243. What are the prices of the joint under the finger pens that are made by A. A. Waterman & Co.? A. $1 up.

RXQ244. Up how far? A. Up as far as $3.50 for a plain pen and $10 for a full mounted pen.

RXQ245. And they sell at $1? A. Yes.

RXQ246. What are the intermediate prices of the joint under the finger, A. A. Waterman & Co. pens? A. $1, $1.50, $2, $2.50, $3, $3.50.

3616 *Eugene Flewitt*

RXQ247. Those are all plain pens? A. Those are all plain pens.

RXQ248. The fountain pens of the A. A. Waterman Company are made of many different styles of holders? A. Quite a few different styles.

RXQ249. And the L. E. Waterman Company pens are made in a great many different styles of holders? A. Yes.

RXQ250. Do you know what the L. E. Waterman Company pens sell for retail? A. They sell from $2.50 up.

RXQ251. And that is true whether they are joint under the finger or self-fillers or safety pens? A. Yes.

3617 RXQ252. They make all those different kinds? A. I believe they do.

RXQ253. Don't you know they sell them on the market? A. A. A. Waterman & Co.?

RXQ254. Yes? A. I know they do but they sell so few of those self-fillers it is hard to tell whether they sell them or not.

RXQ255. How do you know they sell very few? A. Because I never see any around. I don't know as I have seen one that has an L. E. Waterman self-filling pen.

RXQ256. No dealer in this city that has a self-filling Waterman pen? A. I am not talking of dealers I am talking of individuals. I did not see the dealers.

RXQ257. Do you know of any dealers that carry the Waterman Ideal self-filler pen in this city? A. Assuredly.

3618 RXQ258. Most all of them carry them? A. Yes, because when they put in a case of pens they are expected to put in some self-fillers, but a great many of them do not.

RXQ259. But they are generally sold where the Waterman pens are sold; is not that a fact? A. Yes.

By Mr. Bacon:

RDQ260. The proportion of their self-fillers to the end joint pens is very small?

Objected to as without the knowledge of the witness.

A. Yes.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant. 3620

Met pursuant to notice at the office of Alexander S. Bacon, 37 Liberty Street, New York, April 13, 1911, at 10:30 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Complainant.
Alexander S. Bacon, for Defendant.

Mr. Bacon: At the opening of defendant's case, the defendant repeats the offer heretofore made, designated Defendant's Exhibit A, and states that he consents that, in order to avoid the enormous expense of taking testimony and printing the case, etc., he consents that a final decree be entered in substance the same as the interlocutory decree contained in the order of December 10, 1910; and while alleging that the profits of the goods sold to Saadi and marked "Royal Ideal Pen," were far less than $21, he offers, nevertheless, to pay to the plaintiff the damages in the sum of $75. In making this offer the defendant does not admit that it has ever in any instance sold the goods as Waterman goods or Waterman's goods or Waterman Fountain Pens, but always as goods, or pens, of A. A. Waterman & Co.; and does not admit that the plaintiff is entitled rightfully to the use of the word Waterman alone without the initials, but makes this offer 3621

because the defendant has no desire to use the word Waterman alone, as it is of no value to the defendant.

FRED R. RIGHTMIRE, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

*Direct-examination by Mr. Bacon:*

Q1. Please state your name, residence and business? A. Fred R. Rightmire; age, 24; residence, 24 Williamson Avenue, Lyons Farms, N. J.; business, salesman.

Q2. How long have you been a salesman for the Modern Pen Company? A. Going on four years.

3623 Q3. What territory do you cover? A. Outside of the New England States, New Jersey and New York State; and I go in practically all of the States of the Union, and Cuba, Mexico, Canada and Newfoundland.

Q4. State what instructions you had when you first became a salesman for the defendant, in relation to the manner in which you should present these goods to the public? A. I was instructed, as representative of the Modern Pen Company, to sell fountain pens manufactured by A. A. Waterman & Company and to represent them in no other way.

Q5. Did you have knowledge of the injunction granted in New York on September 3, 1898? A. The understanding I had was that there was an injunction granted, that in nowise affected

3624 our using the name A. A. Waterman & Company.

Q6. Did you have any instructions about using the word Waterman alone; if so, what was it? A. I was instructed to use the term A. A. Waterman and Company and when the word Waterman was used to use the initials and the *and* part.

Q7. Have you ever, in any instance, sold any A. A. Waterman & Company fountain pens to any dealer without telling them that you represented A. A. Waterman & Company? A. No, sir.

Q8. Have you ever sold to any dealer who did not know the difference between A. A. Waterman and L. E. Waterman Company's goods?

Mr. Watson: Objected to as evidently incompetent and immaterial and irrelevant.

A. No dealer has ever bought goods from me that did not know that they were A. A. Waterman & Company goods.

Q9. Will you now state your usual method of introducing A. A. Waterman goods to a new customer whom you had never met before? A. I introduced myself to the customer as Mr. Rightmire, representing the Modern Pen Company, and in the next breath, A. A. Waterman & Company.

Q10. Go on and tell us about what you would say to them? A. Of course, that would vary in accordance with what the conditions of the store or the condition of the customer's stock would be. I would attempt to get his interest along competitive lines, with whatever goods he might have in the store. If he 3626
had never handled any other goods, the goods that he was then handling on the spot would determine the line of my effort. The effort would be along giving the customer a more salable and better profit-paying proposition than the line he was handling. In some cases where I did not think there was any possible chance, I would gracefully withdraw.

Q11. Did you ever in any single instance represent yourself merely as selling Waterman pens? A. No.

Q12. Did you usually make comparisons between A. A. Waterman & Company and L. E. Waterman goods? A. Competitive value, if the question came up.

Q13. How did the dealers usually designate the A. A. Waterman & Company goods; by what name did they call them? A. Some of them would call them Modern Pen Company goods; 3627
some would call them A. A. Waterman line; some of them just "self-filling" line. Some dealers would call them Waterman line. The question would come up at times with regard to my line being a genuine Waterman line. My answer to the trade would be that it was just as much genuine as any Waterman line. It is the genuine A. A. Waterman & Company line, or original genuine A. A. Waterman & Company line.

Q14. That is to say, the L. E. Waterman pen is no more a genuine Waterman pen than the A. A. Waterman pen; they are both genuine if they are made by responsible parties? A. That is the way I always recognized it.

3628 *Fred R. Rightmire*

Q15. You have also called attention to the difference between A. A. and L. E., have you? A. I have.

Q16. Do you know how individuals, not dealers, who carry A. A. Waterman pens, usually designate them? A. In what experience I have had, running across them, there are many individuals that do not know either line, only as the Waterman line.

Q17. Have you ever had occasion to make a comparison between A. A. Waterman & Company and L. E. Waterman and other makes of goods, like Rogers' silver, and the like? A. In selling the trade the question the dealers would bring up in re-
3629 gard to a genuine Waterman line, or anything of that kind—the question of the different Rogers, in the silver business, has been brought up and the dealer, in most cases, would see the point and acknowledge that ours was a genuine Waterman line, the same as the L. E. Waterman Company line was a genuine L. E. Waterman Company line.

Q18. There are two or three firms of Rogers' Silver, are there not?

Mr. Watson: Objected to as immaterial.

A. More than that; so I understand.

Q19. How many? A. Several; I would not be able to say just the number.

Q20. That is true of Faber's pencils, is it not? A. Yes, the
3630 same situation is true with regard to three different Faber's pencils. A customer does not know which Faber's pencil he is getting in one case out of a hundred.

Q21. The trade always does know? A. The trade knows.

Q22. That is the case with pens is it? A. That is generally the case with pens.

Q23. Have you ever given any instructions to the dealers as to how they should sell your pens? A. If any cases came up in regard to advertising or putting on sale our pens, I have always urged that they surely use the initials A. A. Waterman & Company; surely using the "&" sign before the company; and I have often made the statement along this line that we wanted

them to surely use the initials A. A., because we were just as proud of our initials A. A., as the other company were of their initials.

Q24. Have you ever seen any advertisements by local dealers where they are advertising A. A. goods as mere Waterman pens? A. I have not come in contact with them.

Q25. Do you cover Cleveland, Ohio? A. I do.

Q26. Did you ever see a sign in front of Basheim's store which reads "A. A. Waterman Company"? A. I have never seen it.

Q27. In Klen's cigar store, I think it is? A. I have never seen such a sign.

3632

Q28. When were you in Cleveland last? A. In December, 1910.

Q29. How long were you there? A. Only a few hours.

Q30. Did you call on that gentleman? A. I did not.

Q31. Hexter Cigar Company; did you see them or their sign? A. I don't know them, no.

Q32. You never have seen this sign of which I have spoken? A. No.

Q33. Were you traveling in the south very shortly after Mr. Raymond made his tour through the south collecting evidence?

Mr. Watson: That is objected to on the ground that no proper foundation has been laid.

3633

A. I was in New Orleans along about the 23rd or 24th of January and I heard that Mr. Raymond had been in there just a few days previous.

Q34. Did you call upon Levy? A. I called upon Joseph Levy Bros. & Company.

Q35. What did they tell you about Mr. Raymond's call down there? A. A floor salesman saw Mr. Raymond in the store and he told him when he first came in, that he came in to buy a Waterman pen and the L. E. Waterman Company case was nearest to the door and he showed him an L. E. Waterman Company pen, but an Ideal pen, and then the man, who he told me was the attorney for the L. E. Waterman Company, asked

him about the A. A. Waterman & Company pens and asked him if he never got them mixed up; and the floor salesman told him he kept them in separate cases entirely; and he asked him how he would be able to get them mixed up with the A. A. Waterman & Co. imprint, against an Ideal imprint and he said there was no similarity whatever and that there was nothing like an Ideal imprint on the A. A. Waterman & Company pen; and then the report that the floor salesman gave me was that the attorney left in a sort of disgruntled condition with the statement that he thought the floor salesman had been posted ahead.

Mr. Watson: I move to strike out the answer as in-
3635 competent.

Q36. T. Haussmann & Son; did you go there? A. Yes.

Q37. Did you have any conversation there? A. I saw Mr. Haussmann, the buyer, a member of the firm, and sold him goods on that trip.

Q38. What did he have to say about Mr. Raymond's visit? A. He told me that the attorney for the L. E. Waterman Company had been there a few days before and asked what pens he was selling and Mr. Haussmann answered that he sold A. A. Waterman & Company pens, which he bought from the Modern Pen Company. After a few words between the attorney and Mr. Haussmann, Mr. Haussmann told the attorney to the effect that he did not care about any argument in regard to the matter,
3636 as he considered the incident closed.

Mr. Watson: Objected to as entirely immaterial, incompetent and hearsay and I move to strike out the answer.

Q39. Do you cover Birmingham and Meridian and all of that part of the south? A. Yes.

Q40. Are you the only salesman of the defendant that does? A. In the larger points, in the points you named, yes.

Q41. In those cities that I have named? A. Yes.

Q42. Is there any single dealer in any of those towns that you cover down there who does not know, from statements made to

3637

him by you, the difference between A. A. Waterman & Company goods and L. E. Waterman Company goods? A. Not now.

Q43. Have you ever sold goods to any dealer in any one of those towns named, where you did not explain to them carefully that you were selling A. A. Waterman & Co. goods? A. I have not in any case, where there was the least possible doubt but what the man thoroughly knew that he was buying A. A. Waterman & Company goods from me.

Q44. If he was an old customer I presume you made no remark about it at all? A. No, other than my introduction and my card and a copy of the order that I always gave them, which absolutely stated that it was A. A. Waterman & Company.

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Q45. Whenever you made a sale you always gave the dealer a copy of the order? A. I did.

Q46. On a printed blank furnished by the defendant? A. Yes.

Q47. And those printed blanks all contained in large letters at the bottom "Modern Pen Company, sole selling agents for A. A. Waterman & Company"?

Mr. Watson: Objected to on the ground that the order is the best evidence.

A. Yes.

Mr. Bacon: Several of such orders are now already in evidence.

3639

Mr. Watson: Counsel for plaintiff states that there is no evidence here to show what copies of orders this witness left.

Q48. The printed blanks for orders are the same to all salesmen?

Mr. Watson: Objected to as this witness cannot possibly know that; and the orders themselves are the best evidence.

A. I have never seen any other order or blank or any other form of order different from the ones that I have had.

3640 *Fred R. Rightmire*

Q49. You were brought up in Rochester? A. I was born and brought up in Monroe County ten miles out of Rochester and in my early days was in Rochester a good deal—Rochester, N. Y.

Q50. You are familiar with the firm of Scranton & Wetmore? A. I am, I have heard of them from childhood.

Q51. What is their standing? A. The largest and best stationers, not only in Rochester but in Western New York. They are known the country over.

Q52. Do they handle A. A. Waterman & Co. goods? A. They do.

3641 Q53. Do you know the firm of Butler Bros., St. Louis? A. I do.

Q54. Blackwell Wielandy? A. I do.

Q55. Are they retailers or jobbers of pens? A. Both are jobbers.

Q56. Do not retail at all? A. No.

Q57. Could Mr. Raymond or any other man go into that firm and buy a single pen without representing himself as a dealer?

Mr. Watson: Objected to as entirely incompetent and merely calling for the opinion of the witness, a matter of which he can have no personal knowledge.

A. I don't think he could. To the best of my knowledge and belief they would not sell any at retail.

3642 Q58. You are familiar with the pens made by the L. E. Waterman Company? A. I am.

Q59. And also with the pens made by the A. A. Waterman & Co., of course? A. I am.

Q60. Do you know what the comparative value of each is as compared with the prices? A. I do.

Q61. Do you hear any complaint about the L. E. Waterman pens; if so, state what they are? A. The complaint is general, that the end joint pens made by the L. E. Waterman Company have a leaky joint.

Q62. Is that a general complaint or an occasional complaint? A. General.

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Q63. Have you ever seen any such pens with leaky joints? A. I have.

Q64. How many—many or few?

Mr. Watson: Objected to as indefinite and improper in form.

A. Many, in comparison with those that I have seen or examined.

Q65. Can a self-filling A. A. Waterman & Co. pen leak at the lower joint? A. It would be impossible; there is no lower joint. It is shellacked solid and tight.

Q66. And the middle joint pen has no joint under the fingers? A. No.

3644

Q67. Do you know the discount that A. A. Waterman & Co. give the retailers?

Mr. Watson: Objected to as immaterial.

A. I do.

Q68. From the published retail prices?

Mr. Watson: Objected to as entirely immaterial to any issue in this case.

A. I do.

Q69. What are they? A. On the self-filling line, from forty to fifty per cent; on the end joint line from fifty to fifty and fifteen.

3645

Q70. What makes the difference in discount—the quantity sold?

Mr. Watson: The same objection.

A. The quantity of the order, considered with the quantity of goods in stock.

Q71. Do you know the discounts given by the L. E. Waterman people?

Mr. Watson: Objected to as entirely immaterial to any issue in this case.

3646 *Fred R. Rightmire*

A. I have that information from the trade.

Q72. What are those discounts from the retail price?

Mr. Watson: The same objections and as hearsay.

A. The trade informs me that their discount is forty per cent from the published list price.

*CROSS-EXAMINATION by Mr. Watson:*

XQ73. You speak about Butler Bros. of St. Louis. Did you ever see their catalogue? A. No, sir.

3647 XQ74. Do you know whether in their catalogue they advertise the A. A. Waterman & Co. pens as Waterman pens? A. I do not.

XQ75. Have you seen Butler Bros., Chicago, catalogue? A. I have not.

XQ76. Do you know whether they advertise A. A. Waterman & Co. line of goods as Waterman pens? A. I do not.

XQ77. Do you know whether Mr. Raymond could have purchased two dozen A. A. Waterman & Company pens from Butler Bros., St. Louis, or not? A. The understanding that I have is that it must be a dealer to buy any goods from Butler Bros., St. Louis.

XQ78. Do you know whether Mr. Raymond could have purchased two dozen pens, of A. A. Waterman & Company, New

3648 York, from Butler Bros.? A. I do not, without he represented himself as a dealer.

XQ79. Do you know whether or not Mr. Raymond could have bought two dozen or more pens from Blackwell Wielandy? A. Not unless he represented himself as a dealer.

XQ80. Do you mean to say that he could not unless he did? A. I don't believe that he could.

XQ81. You don't know anything about it as a matter of fact? A. Only to jobbers.

XQ82. You don't know whether either one of these concerns would have sold two dozen to Mr. Raymond or not, do you?

A. I could not tell. The understanding that I have is that both jobbers sell only to dealers.

XQ83. Do you know E. C. Simmons, of St. Louis? A. I don't know any such firm.

XQ84. E. C. Simmons Hardware Company? A. I know the Simmons Hardware Company.

XQ85. Do you know whether Mr. Raymond could have bought two dozen pens from them or not marked A. A. Waterman & Co., New York? A. The same thing would apply with them.

XQ86. You don't know? A. It is my belief that nobody could buy from any one of the three houses unless they were dealers. 3650

XQ87. You don't know anything about it? A. That is my belief.

XQ88. When you visited Cleveland did you look for a sign in front of Basheim's? A. No, I don't know the man. I don't know his store.

XQ89. The Superior News Company is another name of the concern? A. I don't know the concern. I don't know where the concern is.

XQ90. Their store is located at 24 Public Square West. Do you know that locality? A. I know where Public Square is. I have been all around Public Square.

XQ91. You do not know the Superior News Company or Basheim in that location? A. No. 3651

XQ92. Do you know any store in that location that carries A. A. Waterman & Company, New York, pens? A. I do not.

XQ93. What stores in Cleveland do handle A. A. Waterman & Co., New York, pens? A. The only account in Cleveland that I have been selling is Bert Ramsey.

XQ94. Where is their place of business? A. He formerly had two stores. He is now located in the Colonial Arcade.

XQ95. Where were his stores? A. The other store was at the corner of Erie and Euclid; it is discontinued.

XQ96. When did he discontinue it? A. I think he discontinued that store in 1900.

3658

XQ135. Did he have any A. A. Waterman & Co. pens when you sold him this stock? A. I think he did.

XQ136. Do you know whether he did or not? A. To the best of my memory he did.

XQ137. Did you tell him how he should sell these pens? A. It was understood that they were to be sold as A. A. Waterman & Co. pens.

XQ138. Did you tell him that? A. Yes. He was handling the A. A. Waterman & Co. pens.

XQ139. Did you tell him at that time he must sell these pens as A. A. Waterman & Co. pens? A. I sold them to him as such and he was handling the line at that time.

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XQ140. The question is repeated? A. I cannot say that that exact wording came up at that time pro and con.

XQ141. Didn't you know at that time he was selling A. A. Waterman & Co. pens as Waterman pens? A. I did not.

XQ142. And representing them as Waterman pens? A. I did not.

XQ143. If he had been it would have been wrong, wouldn't it?

Mr. Bacon: Objected to as immaterial; that is a question for the court to decide and not the witness.

A. Yes.

XQ144. Do you know the Hexter Cigar Company in Cleve-

3660

land? A. I do not.

XQ145. Never have been to that store? A. No, sir.

XQ146. Never sold them any goods? A. No, sir.

XQ147. Do you know who sold Blum on Euclid Avenue, Cleveland, A. A. Waterman & Co. pens? A. I don't know the concern.

XQ148. Do you know who sold the Hexter Cigar Store? A. I don't know the concern.

XQ149. Do you know who sold them? A. No.

XQ150. You testified that there is not one customer in one hundred who knows what kind of a pencil he is getting when he asks for a Faber pencil? A. Yes, to the best of my knowledge and belief that is true.

XQ151. Is not that same thing true when he buys Waterman Ideal pens and A. A. Waterman & Co. pens? A. I think the same thing applies.

XQ152. And that is because of a similarity in the marking of the pens, is it not? A. It is because the dealers that are handling the L. E. Waterman line are handling the genuine L. E. Waterman line; and the dealers handling and selling the A. A. Waterman & Co. line, is giving his customers the genuine A. A. Waterman & Co. pen.

XQ153. Is it not true that the customers do not know because of the similarity in the marking of the pen? A. No, sir.

XQ154. How can they be substituted, one for the other, then? 3662
A. I don't know of their substitution.

XQ155. You say one in a hundred does not know the difference in the pen he is getting? A. In that he is getting a Waterman pen; the same as the man is getting a Faber pencil.

XQ156. Dealers are selling A. A. Waterman & Co. as a genuine Waterman pen? A. As a genuine A. A. Waterman pen.

XQ157. Are they not selling them as genuine Waterman pens? A. As a genuine Waterman pen?

XQ158. Yes? A. Yes, a genuine Waterman pen.

XQ159. How long have you known about the L. E. Waterman Company? A. The last four years.

XQ160. Did you ever hear of them before four years ago? A. Not to any great extent.

XQ161. When did you first hear of them at all? A. The 3663
first I remember was when I got into the pen game four years ago.

XQ162. And all this time pens stamped A. A. Waterman & Co. have been sold as genuine Waterman pens? A. No.

XQ163. All the time that you have been talking with the trade the A. A. Waterman & Co. pen has been sold as genuine Waterman? A. As a genuine Waterman pen, yes.

XQ164. What were you doing before you became salesman for the A. A. Waterman Company? I had been salesman for ten years previous.

XQ165. For whom? A. I had been with Sherwin-Williams Company.

3664

XQ166. Is that the only concern you have been with? A. No.

XQ167. What other one? A. Washburn, Crosby & Company.

XQ168. Any others? A. Oliver Typewriter Company.

XQ169. Give the rest of them if there are any? A. S. M. Bixby & Company; The American Chemical Manufacturing Company, which is the same as the Shinola now.

XQ170. What is the business of that last named concern? A. Shoe polishing.

XQ171. The only thing they deal in is shoe polish? A. Yes.

XQ172. What do S. M. Bixby & Company sell? A. Shoe

3665 polish.

XQ173. Sherwin-Williams Company? A. Paints and varnish.

XQ174. The Washburn & Crosby Company? A. Flour.

XQ175. And the Oliver Typewriter Company? A. Typewriters.

XQ176. Stationery supplies also? A. No.

XQ177. Nothing except typewriters? A. No.

XQ178. No ribbons? A. No.

XQ179. No accessories at all, nothing except typewriters? A. That is all.

XQ180. How long were you with them? A. Comparatively a short time.

3666 XQ181. Six months, a year, or how long? A. Less than a year.

XQ182. More than six months? A. I don't think it was.

XQ183. Did you visit the stationery trade when you were with the Oliver Typewriter Company? A. No, I was out here near my home in Elizabeth; any place that I could, around Elizabeth, locally. It was an experiment that I took up with the company to see whether it would pay for a local man in Elizabeth.

XQ184. When was this? A. Just previous to my going with the Modern Pen Company.

XQ185. That is about four or five years ago? A. Yes.

XQ186. Did you know about the Waterman Ideal Fountain Pens then? A. Not to any extent.

XQ187. You did not know they were on the market did you? A. I had heard of two Waterman lines at that time but it never interested me any.

XQ188. Did you sell these Oliver Typewriters to Wolfson Bros. of Jersey City? A. No.

XQ189. Did you sell them to any dealers in Jersey City? A. No, sir, I never called on any dealer in Jersey City.

XQ190. You have sold Wolfson Bros. A. A. Waterman & Co. fountain pens, have you not? A. No. I don't do anything in New Jersey at all.

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XQ191. Do you always leave a card when you call on customers? A. Unless I know the customer.

XQ192. Have you got one of the cards that you use? A. I have not a card with me. I left my case in my other clothes this morning.

Mr. Bacon: We will produce one of the cards.

XQ193. You say when you went to work for the A. A. Waterman & Co., and the Modern Pen Company—you consider those one concern don't you? A. Sir?

XQ194. They are one concern, the Modern Pen Company and the A. A. Waterman & Company? A. As far as I am concerned.

XQ195. Who hired you? A. Mr. Martling. 3669

XQ196. They have no separate offices; their offices are in the same place, A. A. Waterman & Co. and the Modern Pen Company? A. I don't transact any business with A. A. Waterman & Co. I don't know them.

XQ197. You don't know them at all? A. No, sir.

XQ198. You don't know where their place of business is? A. I know they have a factory.

XQ199. Where is their place of business? A. 22 Thames Street.

XQ200. Where is their office? A. The same building I suppose.

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XQ201. Don't you know it is? A. I don't have any transactions with the A. A. Waterman Company at all.

XQ202. You have never been in their offices? A. A. A. Waterman & Co.?

XQ203. Yes? A. I have been in the offices that the A. A. Waterman & Co. use.

XQ204. Where is that? A. 22 Thames Street.

XQ205. The same place as the Modern Pen Company? A. Yes.

XQ206. In the same room? A. Yes.

XQ207. And the same men do the business, don't they? A. I don't have anything to do with the A. A. Waterman & Co.

3671 business.

XQ208. Then you never have received any instructions from the A. A. Waterman Company as to how you should sell these pens? A. My instructions were from the Modern Pen Company for whom I work.

XQ209. And when you went to work you say you had knowledge of the Kellogg decree? A. I did not know what name it was under. The knowledge that I had was that there was a decree that we use only the word Waterman with the initials A. A. & Company.

XQ210. Who told you about it? A. To the best of my memory, Mr. Martling.

XQ211. Did he show you a copy? A. I don't know.

3672 XQ212. All you know is what he told you? A. I know it was impressed on my mind to that effect. The methods I could not state.

XQ213. You testified that you were instructed that you should not sell these as Waterman pens; is that right? A. Yes.

XQ214. Did he tell you why? A. The only reason that I have ever known was that the decision of the court had given us the right to sell them as A. A. Waterman & Co. pens.

XQ215. They did not tell you why except that? A. That is all I know.

XQ216. Did they tell you that they were enjoined from calling them Waterman pens? A. That was understood on my part.

XQ217. That was simply inferred on your part? A. I so understood.

XQ218. Who did you understand from? A. Mr. Martling, I presume.

XQ219. Did you have any talk with Mr. Geyer who is present here now, when you were employed? A. Yes, I met Mr. Geyer.

XQ220. At that time? A. Yes.

XQ221. Did he give you any instructions? A. No.

XQ222. You did not have any talk with him about how you should sell these pens? A. Only in a general way, that that was understood with all of us in the office in conversation. I hired to Mr. Martling.

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XQ223. Was Mr. Geyer present when you were hired? A. I don't think he was in the office at that time. I don't think he was in the office at the time I made the contract. I met him at that time in a general way.

XQ224. You never had any business relations at all with A. A. Waterman & Co.? A. No, sir.

XQ225. You are sure about that? A. Yes.

XQ226. That you were employed by the Modern Pen Company? A. Yes.

XQ227. Then why, when you introduced yourself as a salesman of A. A. Waterman & Co. goods did you say that you represented A. A. Waterman & Co.? A. The Modern Pen Company have the selling of A. A. Waterman & Co. goods.

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XQ228. You thought it necessary to use that word did you, to sell the goods? A. The goods in most cases were either handled, or known, under that name by the trade that I was calling on.

XQ229. You used the name Waterman because that helped you to sell the goods, didn't you?

Mr. Bacon: Objected to.

A. I never used the name Waterman to help sell goods. It was used where the goods were either handled or known as A. A. Waterman & Co. goods; and that is what I was there to sell them.

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XQ230. It did not make any difference whether the man knew anything about the pens or not. The first time you visited a dealer who never had handled A. A. Waterman & Company goods you found it necessary to tell them that they were A. A. Waterman & Co. goods? A. The goods were all imprinted A. A. Waterman & Co., and it was not necessary to do that. He saw it from the sample.

XQ231. Were not some of them imprinted Modern Pen Company? A. If it was it had A. A. Waterman & Co., on it.

XQ232. Always? A. Yes.

XQ233. You never saw any pens that were made by the Modern Pen Company that did not have A. A. Waterman & Co.

3677 on them? A. I have seen such pens but I did not carry them.

XQ234. You know that they were making and selling that kind of pens, don't you? A. I was not carrying them.

XQ235. Do you know whether they were making and selling that kind of pen, the Modern Pen Company and A. A. Waterman & Co.? A. Yes, I have seen such pens.

XQ236. How long have you seen them? A. I have not seen them for the last two years.

XQ237. Have you ever had any experience in the manufacture of fountain pens? A. No, sir.

XQ238. You do not know anything about the grade and quality of fountain pens as a manufacturer? A. No, sir.

XQ239. As you travel around the country have you not

3678 found that the Waterman Ideal Fountain Pens are sold in the leading stores of the country? A. In some cases.

XQ240. In most of the leading stores of the country?

Mr. Bacon: Objected to as immaterial.

A. No, they are sold any and every place.

XQ241. They are very widely sold, are they not? A. In all kinds of stores, good, bad and indifferent.

XQ242. Do you know Burrows Bros. of Cleveland? A. I know who they are.

XQ243. Do you know whether they handle Waterman Ideal Fountain pens? A. To the best of my memory they do.

XQ244. Do you consider them one of the leading stores in Cleveland? A. It is a very good store.

XQ245. A very large store? A. Yes.

XQ246. It is on one of the main streets? A. Yes.

XQ247. Do you know Vosburg, Whiting & Company of Buffalo? A. I don't go to Buffalo.

XQ248. You never have been in Buffalo? A. I have been in Buffalo, yes. I never heard of them.

XQ249. Do you know the Williamson Stationery Company of Rochester? A. I never heard of such a concern.

XQ250. You do not know that they have been in business for fifteen or twenty years? A. I never knew of the Williamson Stationery Company in Rochester. 3680

XQ251. Do you know of any Williamson Stationery Company anywhere? A. No.

XQ252. Do you know the Franklin Printing Company of Toledo? A. Yes.

XQ253. Did you ever sell him any pens marked A. A. Waterman & Co.? A. I don't think so.

XQ254. Do you know whether they ever carried them or not? A. I don't think so.

XQ255. Did you ever solicit their orders? A. I have.

XQ256. What kind of pens were they carrying when you solicited their orders? A. The Franklin Printing & Engraving Company were handling Conklin pens and had some Ideals, but were very much inclined to give the L. E. Waterman Ideal pens 3681 the worst of it and buy other pens. They told me the last time I called on their buyer that where they had been buying them in five gross lots and their orders fell something between sixty and seventy dollars for the L. E. Waterman Ideal pens.

Mr. Watson: I move to strike out the answer as not responsive and as volunteered.

Mr. Bacon: Objected to.

XQ257. When did you solicit their order? A. Within the last two or three years?

XQ258. When did you have this conversation with them last? A. I could not name the date.

XQ259. What did they say about A. A. Waterman & Co. fountain pens? A. There was no chance for any business. I had a friendly visit with the buyer and the conversation I have repeated was about all there was to it. There was no chance for us to get in. Conklin had all the business and that was the line that they were pushing at that time. There was no chance for us to get in. I had a very friendly visit with the buyer.

XQ260. Didn't they tell you that they used to carry A. A. Waterman & Co. goods? A. I don't remember any such thing.

XQ261. No conversation about that at all? A. No.

XQ262. They refused to give you an order? A. Yes. There was some talk, on what we termed imprint pens, and cheaper
3683 priced pens and they might give me an order later.

XQ263. Do you cover the City of Washington, D. C.? A. I have been there. I don't cover it now.

XQ264. When were you there? A. In 1910.

XQ265. Did you sell John Saadi some pens? A. I did not.

XQ266. Whom did you sell in Washington? A. I think the name of the concern was Franklin & Co., and one of the department stores.

XQ267. Do you know D. P. Andrews & Co. of Washington? A. I know who they are.

XQ268. On F Street? A. I remember their name.

XQ269. That is one of the leading stores in Washington, is it not? A. That is one of the leading stationers.

3684 XQ270. Do you know whether they carry Waterman Ideal Fountain Pens? A. I do not know.

XQ271. Do you know Brentano's Book Store in Washington? A. I have heard of it. I never was in that store.

XQ272. That is the leading store in Washington, is it not? A. That I do not know.

XQ273. Do you know the Stott stationery store in Washington? A. I do not.

XQ274. Did you ever sell Crowley, Milner & Company? A. Yes.

XQ275. When? A. 1910.

XQ276. Was that the first time? A. I think that is the first time, to that firm. It reorganized. I would not be positive.

XQ277. That is the first time that they had seen A. A. Waterman & Co. goods? A. Oh, no, they had handled them right along, Crowley, Milner & Company were successors to the old firm of Partridge & Blackwell.

XQ278. Did you give this concern any instruction not to sell the A. A. Waterman & Co. pens as Waterman pens? A. I don't remember that condition ever coming up.

XQ279. Did you ever mention anything about it as far as you remember? A. I know they bought the pens as A. A. Waterman & Co. pens and the girl at the pen counter knew that they were A. A. Waterman & Co. The young lady, Miss Cooney, at the pen counter knew that they were A. A. Waterman & Co. pens. 3686

XQ280. You do not come in contact with retail customers, do you? A. No, only in very exceptional cases.

XQ281. Did you sell Tillotson of Ishpeming, Michigan? A. I don't know. I don't remember being in that town.

XQ282. Do you cover Baltimore? A. I do not now. I have been there.

XQ283. When did you cover Baltimore? A. In 1910.

XQ284. Do you know Meyer & Thalheimer? A. I do.

XQ285. Do they carry fountain pens? A. Yes.

XQ286. Do you know whether they carry Waterman Ideal Fountain Pens? A. I do not know.

XQ287. It is the leading store in Baltimore is it not? A. One of the leading stores. 3687

XQ288. Do you know Lucas Bros. of Baltimore? A. No, I don't remember them.

XQ289. You don't know that Lucas Bros. is one of the leading stationery stores in Baltimore? A. I don't remember the name.

XQ290. Never called on them? A. Not to my memory.

XQ291. Did you ever sell Jensen, Herzer & Jeck of Nashville, Tennessee? A. Yes.

XQ292. When did you first sell them? A. Two or three years ago.

XQ293. Have you sold them since? A. Yes.

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XQ294. Did you tell them that they should not sell these A. A. Waterman & Co. goods as Waterman pens? A. That condition never came up. They knew they were A. A. Waterman pens.

XQ295. You never did tell them about it? A. It has been talked between us. They know they are A. A. Waterman & Co. goods, and they know the firm and the conditions.

XQ296. They sell these goods as geniune Waterman pens, don't they? A. I don't know that they sell them as genuine Waterman pens.

XQ297. You don't know they do not, do you? A. No, I don't know that they do not.

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Mr. Bacon: Objected to as ridiculous.

XQ298. You don't know whether Mr. Raymond saw anybody else except the floor salesman in Joe Levy's, do you? A. The floor salesman told me that he was the only one that he saw and Mr. Levy told me that he saw the floor salesman.

XQ299. You do not know whether he saw anybody else or not, you have no personal knowledge? A. I was not there. The floor salesman told me.

XQ300. You have no personal knowledge of it? A. I was not there.

XQ301. You only know what they told you? A. Yes.

XQ302. The same thing is true of what occurred at Hauss-
3690 mann's store; you have no personal knowledge? A. I was not there.

XQ303. What kind of pens do Haussmann & Company carry? A. A. A. Waterman & Co. pens.

XQ304. You have testified that you have in some cases instructed dealers to be careful to use "A. A." and "& Company;" is that so? A. Where a dealer brought up a proposition of advertising for a sale, or something of that nature, putting a big ad in the paper, I have done that.

XQ305. Those were very exceptional cases where that matter came up at all, were they not? A. I always told them that same thing wherever it came up.

XQ306. Did you sell Aloe in St. Louis? A. No, I never sold them a dollar's worth of goods.

XQ307. Did you ever see their advertisement for these goods that you were selling? A. No, I never have seen Aloe Optical Company's advertisement of fountain pens.

XQ308. Have you ever sold Scruggs, Vandevout & Barney of St. Louis? A. No.

XQ309. Have you ever seen any of their advertisements of A. A. Waterman & Co. fountain pens? A. No.

XQ310. You don't know how they advertised them? A. No.

XQ311. Have you ever seen any of the advertisements of Scruggs of Montreal, Canada? A. Scruggs or Scroggie? No, I have never seen any of their advertisements. 3692

XQ312. You do not know that they advertised A. A. Waterman & Co. fountain pens as Waterman pens? A. No, sir.

XQ313. Do you cover Philadelphia? A. Not now.

XQ314. When did you cover Philadelphia? A. I was in Philadelphia one day in 1910.

XQ315. Is that the only trip you made there? A. Yes.

XQ316. There is a large stationery store on Chestnut Street opposite the Post Office; what is the name of that store? A. I could not tell you. I do not know the trade there.

XQ317. Have you ever sold Jacoby's Pharmacy in Birmingham? A. I don't think there is a Jacoby's Pharmacy in Birmingham.

XQ318. Do you know of a Jacoby's Pharmacy anywhere? 3693
A. There is a Jacoby's Pharmacy in Tennessee.

XQ319. Did you sell them? A. No, sir.

XQ320. Did you ever sell Jacobs' Pharmacy in Birmingham? A. No, sir.

XQ321. Did you ever sell Thayer in Memphis, Tennessee? A. No.

XQ322. Did you ever visit him? A. No.

XQ323. How long since you visited Toronto, Canada? A. I was in Toronto between Christmas and New Years, 1910, the last week in December, 1910.

XQ324. How frequently have you been there in the last four years? A. On an average two or three times a year.

3694 *Fred R. Rightmire*

XQ325. Do you know O. B. Stanton? A. I know him personally.

XQ326. One of the leading stationery stores in Toronto? A. One of them.

XQ327. Does he sell Waterman's Ideal Fountain Pens? A. They used to sell them almost exclusively. He is selling a good many Swans along with them now. His loyalty to the Ideal line was somewhat shaken the last visit I had with him.

XQ328. How many Swan pens did you see in the stock? A. A few dozen.

XQ329. Three dozen? A. As I remember, it was quite a large standing case, my memory is a gross case.

3695 XQ330. If he testified that he had less than three dozen then would you believe he was telling the truth? A. He may have lowered his stock to that amount. I would not dispute Mr. Stanton's word.

XQ331. He is a man of probity, a man that you would believe? A. I would consider him such, yes.

XQ332. And if he testified that he had a very large stock of Waterman's Ideal Pens would you believe him? A. I would.

XQ333. And if he testified that he had only sold two or three Swan pens since he carried them, would you believe him? A. That might be personal with him.

XQ334. No, I mean in his store? A. I don't like to answer any question where you would doubt a man's word under oath.

3696 XQ335. Might you not have made some mistake as to the fact that he had a large case of Swan pens? A. No, sir, not at the time that I was there.

XQ336. The case that you refer to you are willing to swear was not marked Waterman's Ideal Fountain Pens? A. The case that I refer to I know was the Swan pen and we talked about it.

XQ337. I am talking about the case, the large standing case that you mentioned? A. The L. E. Waterman case was a long counter case. It is a much larger case than the Swan case.

XQ338. That was full of Waterman's Ideal Pens was it not when you were there? A. It looked like the regular stock.

XQ339. Fifteen or twenty dozen or so? A. I imagine they carried that amount.

XQ340. How long since you visited Montreal, Canada? A. I have been in Montreal in the fall of 1910.

XQ341. And you have been there frequently the last three or four years? A. Oh, yes.

XQ342. Do you know the store kept by George Foster Brown in Montreal? A. I do.

XQ343. He is one of the largest stationery and book stores in Montreal? A. In the line of being an old fogy.

Mr. Watson: I move to strike out the answer as not responsive. 3698

XQ344. (The question is repeated.) A. (Continued) I do not consider him one of the representative stationery stores of the city.

Mr. Watson: I move to strike out the answer as not responsive.

XQ345. (Question is repeated.)

Mr. Bacon: Objected to as the question is already answered.

XQ346. (Repeated.) He is one of the largest stationery and book stores in Montreal? A. My previous answer.

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Mr. Watson: I move to strike out the answer as not responsive and the question is repeated.

Mr. Bacon: Is he a large dealer or a small dealer?

Mr. Watson: That is not the question.

The Witness: What is the question?

XQ347. (Repeated.) He is one of the largest stationery and book stores in Montreal? A. One of them.

XQ348. Where is his store located? A. St. Catherine's Street, West.

XQ349. It is one of the principal retail business streets is it not? A. Yes.

3700

XQ350. You have been selling goods for the Modern Pen Company in Boston, Mass.? A. No, sir.

XQ351. Any New England points? A. No, sir.

XQ352. How long have you been traveling in the West for the Modern Pen Company? A. What part of the West?

XQ353. Say west of the Mississippi River? A. 1910 and 1911.

XQ354. Not before that? A. Not west of the Mississippi, I don't think.

XQ355. How far west did you go prior to that? A. I went just to the river, New Orleans, Memphis, Louisville.

XQ356. When did you first go to Omaha? A. 1910.

XQ357. The early part of 1910? A. Yes, in the early months.

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XQ358. And you went through to the Pacific coast at that time? A. No, I did not at that time. I did later in the year.

XQ359. On that same trip? A. No.

XQ360. What did you cover on that trip? A. I went first to Omaha. As I remember it I went as far as Denver, Colorado Springs and Pueblo.

XQ361. That was in the early part of 1910? A. Yes.

XQ362. Did you ever travel in Arkansas? A. No.

XQ363. Or Kansas? A. I went through Kansas; I never stopped. Yes, I did stop at certain points I think.

XQ364. And that was in the early part of 1910? A. Yes. It was either the early trip or the July trip. I don't remember.

XQ365. In the July trip what territory did you cover west of

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the Mississippi River? A. I went through to the coast. San Francisco, Los Angeles.

XQ366. Pueblo? A. Yes.

XQ367. And all the principal intermediate places? A. The largest cities.

XQ368. Who was the salesman of the Modern Pen Company that covered the western territory prior to your covering it? A. I don't know.

XQ369. Was it covered by somebody? A. I don't know.

XQ370. You don't know whether any salesman went out? A. No, I do not.

XQ371. Do you know whether they had any salesman in that territory at all? A. Not just previous to my going. I don't know that anyone was out there.

XQ372. At any time prior to your going there do you know of any salesman covering that territory for the Modern Pen Company? A. I don't know that a salesman was out there.

XQ373. They sold goods out through that territory? A. Yes.

XQ374. How long has that been?

Mr. Bacon: Objected to as immaterial and I direct the witness not to answer.

Mr. Watson: I will certify the question. 3704

XQ375. By whose instructions did you go into that territory west of the Mississippi River?

Mr. Bacon: I object and instruct the witness not to answer, as this is evidently an attempt to get evidence for another suit.

A. I am directed not to answer.

XQ376. Do you refuse to answer? A. I am directed not to answer.

XQ377. Do you refuse to answer?

Mr. Bacon: I direct him not to answer on the ground that this inquiry has nothing to do with these issues and is transparently for the purpose of gathering testimony improperly for another controversy. 3705

XQ378. Do you refuse to answer? A. Yes.

XQ379. You refuse to answer by whose instructions you made this trip, or two trips, in 1910, into the territory west of the Mississippi River? A. Yes.

XQ380. And you refuse to answer what salesman covered this territory prior to 1910, for the Modern Pen Company? A. I have told you that I did not know.

XQ381. Do you know whether the goods of the Modern Pen Company were sold in the territory west of the Mississippi River prior to 1910?

Mr. Bacon: Objected to. I direct him not to answer, for the same reasons as indicated already.

XQ382. Do you refuse to answer? A. Yes.

Mr. Watson: The examiner will certify those two questions.

XQ383. When you made these trips for the Modern Pen Company who was it gave you your instructions?

Mr. Bacon: The same direction.

A. What trips?

3707 XQ384. Any trip that you made? A. I had no instructions.

XQ385. You could go anywhere you wanted to? A. Yes.

XQ386. When you made the trip to Chattanooga, Birmingham, Nashville and other places, who gave your instructions to make those trips? A. I made out my own route.

XQ387. Did you submit it to anybody before you left on those trips? A. I talked it over with them.

XQ388. Whom did you talk with? A. With regard to what trips?

XQ389. Any trips that you have made since you have been employed by the Modern Pen Company?

Mr. Bacon: Objected to as immaterial and the witness is directed not to answer.

3708 XQ390. Do you refuse to answer? A. Yes.

Mr. Watson: The examiner will certify the question.

XQ391. Who gave you the instructions about the sale of the pens to the A. A. Waterman & Co.? A. When I first went with the company?

XQ392. At any time? A. Mr. Martling.

XQ393. Is he the only one? A. I have had instructions from Mr. Geyer.

XQ394. Mr. Martling has not been connected with the Modern Pen Company for some time, has he? A. No.

XQ395. When did he leave; do you know? A. I think it was the fall of 1909.

XQ396. And since that time who has given you your instructions with regard to the sale of A. A. Waterman & Co. pens? A. Mr. Geyer.

XQ397. Is he the only one that has given you any instructions? A. Yes.

XQ398. Do you know where Mr. Martling is now? A. I do not.

XQ399. When did you last hear of him? A. I have not heard of him since he left the office, only indirectly.

XQ400. Where did you hear of him last? A. What was his position the last time I heard? 3710

XQ401. Yes? A. He had some position I think with the National Cloak & Suit House.

XQ402. Where is that? A. New York City.

XQ403. When did you hear of him there? A. I cannot remember.

XQ404. Within a year? A. I presume so. I don't know very much about him. I have not heard.

XQ405. When Mr. Martling left, sometime in 1909, as you remember, you received your instrutcions from Mr. Geyer? A. Yes.

XQ406. When you made these trips he told you where to go didn't he? A. No, sir.

XQ407. Didn't he arrange your route list? A. No. 3711

XQ408. Did you submit your route list to him before you left? A. Yes.

XQ409. He approved it, did he? A. I don't think any approval was given. It was taken for granted.

XQ410. He did not make any objection to your route, where you were going?

Mr. Bacon: I object to this and direct the witness not to answer; it is going into matter that is wholly foreign and highly improper to this examination.

XQ411. Do you refuse to answer? A. Yes.

Mr. Bacon: I direct him not to answer.

Mr. Watson: I will certify the question.

XQ412. Did you ever make any extended trip anywhere that you did not submit your route to Mr. Geyer or somebody else in authority in the Modern Pen Company?

Mr. Bacon: The same direction.

A. I refuse to answer.

Mr. Watson: I will certify the question.

XQ413. Did you know that the Modern Pen Company had
3713 made a contract not to sell its goods west of the Mississippi River?

Mr. Bacon: Objected to and I direct the witness not to answer.

A. I refuse to answer.

Mr. Bacon: This question indicates to the court the reasons for these other highly improper questions, concerning which the L. E. Waterman Company has no interest.

XQ414. Do you know anything about these contracts that I referred to in my last question?

3714 Mr. Bacon: You can answer that.

A. I don't know anything.

XQ415. Have you ever been told anything about them by Mr. Geyer? A. I don't know what the contracts are that you refer to.

XQ416. You never heard of them? A. I have heard indefinitely.

XQ417. Whom did you hear of them from? A. More from the trade than anybody else.

XQ418. Never heard of them from Mr. Geyer? A. We talked indefinitely about them. I don't know what they are.

XQ419. Do you know any concern named A. A. Waterman & Co., Inc., of Chicago? A. Only from hearsay.

XQ420. Do you know where they sold their goods? A. I know some places.

XQ421. Where? A. They have sold a few in Duluth.

XQ422. Is that the only place? A. I suppose that I could think of some; they would be very few places; none of the larger towns that I got into.

XQ423. Did they sell any of their goods in Seattle? A. There is one stationer there that has bought their goods.

XQ424. What is the name of the concern?

Mr. Bacon: Objected to as immaterial and the wit- 3716
ness is instructed not to answer.

XQ425. Do you refuse to answer? A. Yes.

XQ426. What is the name of the concern in Duluth that you refer to?

Mr. Bacon: The same objection and instructions.

A. I refuse to answer.

Mr. Watson: I will certify these questions.

XQ427. Do you know under what name these goods are sold?

Mr. Bacon: You may answer that if you know.

A. As to who sells them, I have never seen any billhead. I 3717
don't know who sells them.

XQ428. Did you ever know of their selling any goods in Cleveland? A. No, sir.

XQ429. Did you ever know of their selling any goods east of the Mississippi River? A. I don't know.

XQ430. You never heard of it, did you? A. I heard of it indirectly.

XQ431. You don't know of any case? A. I could quote you a case.

XQ432. Do you know A. A. Waterman? A. No.

XQ433. You never knew him? A. No.

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XQ434. Do you know anybody connected with the concern of A. A. Waterman & Co., Incorporated of Chicago? A. I know no one personally, no, sir.

XQ435. Never talked with any of them? A. No, sir.

XQ436. Did you meet their salesman? A. No.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ437. You have seen their goods on sale east of the Mississippi have you not, the A. A. Waterman Company of Chicago? A. Noyes Bros. & Cutler of St. Paul, Minn., have their goods on sale. That is east of the Mississippi River.

3719

RDQ438. Did you strike any competition through Ohio and Indiana from the A. A. Waterman Company of Chicago? A. I heard of it but not any active competition in the larger points. A. A. Waterman & Co. goods, of Chicago—A. A. Waterman & Co., Incorporated—were sold to dealers in Zanesville, Ohio.

RDQ539. When did you see Mr. Swan of Toronto and what did he say about the Ideal goods? A. Stanton you mean?

RDQ440. What is the name of that firm of Toronto that sold the Swan pens? A. O. B. Stanton.

RDQ441. Whom did you see there? A. Mr. Stanton, himself.

RDQ442. What did he say about Ideal pens?

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Mr. Watson: Objected to as entirely incompetent, and hearsay, and Mr. Stanton has been examined in this case.

Mr. Bacon: The question is asked to be answered on the ground that Mr. Watson has brought it out?

A. Mr. Stanton and myself have always been very friendly although I never sold him any goods. He always invited me to come in and see him. I have always known him up to the last call or two as a strictly loyal Ideal man, an L. E. Waterman & Company booster. I should judge from the last visit that I had with him that his trade was becoming divided and he found that he had to have another pen aside from the L. E. Waterman Ideal pen.

Mr. Watson: I move to strike out the ansewr as incompetent and immaterial.

RDQ443. Is that all that he said?

Mr. Watson: The same objections.

A. That is as near as I can remember it, that he had added another line. On my previous visits he never seemed inclined to consider any other line.

RDQ444. What dealers in Toronto carry the A. A. Waterman & Company pens? A. The trade that I see in Toronto is a jobbing trade, wholesale trade. I saw Goldsmith Stock Company, Ltd., Warwick Bros. & Rutter. 3722

RDQ445. Are these firms prominent? A. They are the largest in their respective line.

RDQ446. Who do you sell in Montreal? A. I sell to Granger Freres, Librarie Bauchemin, Edward Eaves, Ltd., O. W. Barwick, A. T. Chapman, J. G. Gratton, O. St. Jean—there may be some others I sell occasionally that I do not call to mind.

RDQ447. Are they prominent in their respective lines? A. Granger Freres is by far the largest retail house on the French side; and Librarie Bauchemin come in very strong for both wholesale and retail among the French people in Montreal. The others I would consider just average trade.

RDQ448. You have been down in Mexico? A. Yes.

RDQ449. Did you find the L. E. Waterman goods down there? A. In Mexico City quite prominent; and the other points that I made in the republic, no. 3723

RDQ450. In what way were they sold down there; do you know? A. The dealers that I talked with that had L. E. Waterman Company goods told me they were on consignment.

RDQ451. Did A. A. Waterman & Co., ever sell goods on consignment? A. Not to my knowledge.

RDQ452. In your cross-examination did you make a distinction between a genuine Waterman pen and the genuine Waterman pen? You were examined along that line as I remember? A. I made the statement that I said to the trade that our pen was a genuine Waterman pen as much as any pen

was a genuine Waterman pen; ours was the genuine A. A. Waterman & Co. pen, regardless of what the other fellow had.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ453. Then I take it from your re-direct examination you do make a difference between the genuine Waterman pen and a genuine Waterman pen? A. I know they use the expression a genuine Waterman pen.

RXQ454. You have talked to the trade and called the pen of the A. A. Waterman Company the genuine Waterman pen? A. No, sir.

3725 RXQ455. Or a genuine Waterman pen? A. Yes, sir.

RXQ456. Then you do make a distinction betwen a genuine Waterman pen and the genuine Waterman? A. There is no the, because there is more than one Waterman.

RXQ457. Then you have told the trade that the A. A. Waterman & Co. is a genuine Waterman pen? A. Yes.

RXQ458. That is the way you sold it to the trade? A. When the question was brought up—I have sold all the pens as A. A. Waterman & Co., pens; when the question was brought up if it was a genuine Waterman I answered it yes, and told them so.

RXQ459. These concerns that you mentioned in Toronto are all wholesalers, are they not? A. Yes.

RXQ460. Do you know a single retail store in Toronto where
3726 they sell A. A. Waterman & Co. goods? A. I never call on them.

RXQ461. What you said about the dealers in Mexico having Waterman Ideal Fountain Pens on consignment, the only thing you know about it is what you were told? A. The dealers universally told me so.

RXQ462. You don't know whether it is a fact or not? A. I saw no bill.

RXQ463. And have no personal knowledge of it at all? A. No.

RXQ464. This concern in Zanesville, Ohio, that you say had a stock of A. A. Waterman & Co., Chicago pens, what is the name of that concern?

Mr. Bacon: Objected to.

A. I cannot recall the man's name to mind right now.

RXQ465. Do you know where he bought those pens? A. I never saw any bill.

RXQ466. You have no information as to where he bought the goods? A. No, sir, not that I remember.

RXQ467. That is the only one that you know, is it not, east of Chicago? A. That is the only one that I call to mind now.

RXQ468. Did you ever run across any others? A. I have heard of others.

RXQ469. But you never saw any stock except that one? A. That is the only one I remember. 3728

RXQ470. You would remember it if you saw it wouldn't you?

Mr. Bacon: Objected to as immaterial and the witness is directed not to answer any further questions along this line as the evidence is transparently improper.

A. I refuse to answer.

Mr. Watson: I will certify the question.

RXQ471. Do you know how the Zanesville, Ohio concern that you mentioned that had a stock of A. A. Waterman & Co., Chicago pens sold those pens to the public?

Mr. Bacon: Objected to as immaterial.

3729

A. I don't know.

RXQ472. Did you cover Decatur, Illinois? A. No, sir.

RXQ473. Never have been in that town? A. No, sir, not to my memory.

By Mr. Bacon:

RDQ474. You don't recognize that L. E. Waterman Company has any right to the word genuine? A. No, sir.

3730

FRED R. RIGHTMIRE, recalled on behalf of the defendant:

*By Mr. Bacon:*

RDQ475. You have just been up in Canada? A. Yes.

RDQ476. And saw Mr. David Racine? A. Yes.

RDQ477. A jeweler in Quebec? A. Yes.

RDQ478. Did he say anything about his recent visit to the L. E. Waterman Company?

Mr. Watson: Objected to as immaterial and irrelevant.

A. Yes.

RDQ479. What did he say?

3731

Mr. Watson: Same objections.

A. That he had recently been in the store of L. E. Waterman Company, Limited, in Montreal and while he was in the store with two or three repairs some one in the store told him that there was no more such concern as A. A. Waterman & Co. of New York and tried to get his order for pens from him on that representation.

RDQ480. How long ago was this talk with Mr. Racine?

Mr. Watson: Same objection.

A. I saw Mr. Racine day before yesterday and his visit in Montreal was of recent date, since the first of this year.

3732 RDQ481. Did you also call on Granger Freres in Montreal? A. I did.

RDQ482. What did they say?

Mr. Watson: The same objection.

A. Granger Freres carry the A. A. Waterman & Co. line and also very few of the L. E. Waterman Co. Ideal pens and when customers come in and call for a Waterman pen, then when an Ideal is shown, the customer says, "No, that is not a Waterman pen; it is not the Waterman pen I want; I want the one that turns at the end," and in selling them that turn at the end the customer twists his hands one above the other to show how the pen works that they want.

RDQ483. Did you also see very recenly Mr. Ball, of the Ball Book Company, Pensacola, Florida? A. I saw him in the fall of 1910.

RDQ484. What did he say about this controversy?

Mr. Watson: Objected to as incompetent and immaterial.

A. Mr. Ball told me that Mr. L. E. Waterman the vice-president and traveling representative for the L. E. Waterman Company told him that by the next trip Mr. Ball would not be able to get any more pens imprinted A. A. Waterman & Co. and to back up his assertions he bet a box of cigars with Mr. Ball that he would not be able to get any more pens imprinted A. A. Waterman & Co., after the next trip. 3734

RDQ485. Did you also see Mr. O. B. Stanton of Toronto? A. Yes.

RDQ486. What did he tell you about this matter?

Mr. Watson: Objected to as immaterial.

A. Mr. O. B Stanton who has been a very loyal Ideal booster told me that a customer wanted one of our pens and it was impossible for him to sell him an Ideal in its place and he had to mail an order in to us for one of our A. A. Waterman & Co. pens, which he did.

Mr. Watson: I move to strike out all the testimony of this witness as immaterial and incompetent. 3735

*CROSS-EXAMINATION by Mr. Watson:*

RXQ487. Did you tell Mr. Ball of Pensacola that you were looking for a better job? A. No, sir, I did not.

RXQ488. Did you tell L. E. Waterman recently when you met him that you were looking for a better job? A. I did not.

RXQ489. At the time of this conversation with Mr. Ball the defendant was under an injunction not to use the name A. A. Waterman & Co., weren't they? A. Sir?

RXQ490. At the time of this conversation with Mr. Ball, the defendant, the Modern Pen Company, were under injunction not to use the name A. A. Waterman & Co., were they not? A. Not to my knowledge, no.

RXQ491. You never heard of that did you; you never heard that there was an injunction issued against the Modern Pen Company? A. I heard that there was, with an immediate stay.

RXQ492. You did hear then that there was an injunction issued? A. Yes.

By Mr. Bacon:

3737 RDQ493. You also heard that the Circuit Court of Appeals reversed that injunction and permitted the use of A. A. Waterman & Co.? A. I did.

Mr. Watson: I move to strike out the question and answer as not in accordance with the facts.

Deposition closed.
Signature waived.

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HOBART W. GEYER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

3738 *Direct-examination by Mr. Bacon:*

Q1. Please state your name, residence and occupation? A. Hobart W. Geyer; Ridgewood, N. J.; treasurer of the Modern Pen Company and manager for A. A. Waterman & Co. of New York.

Q2. When did you first know A. A. Waterman? A. The latter part of 1900. It is possible that I got acquainted with him in 1899. I began doing business with him in 1899, but whether I met him at that time or not I do not remember.

Q3. In what business were you at that time? A. I was treasurer of the Frazer & Geyer Company, manufacturers of fountain pens.

Q4. When did you first begin to manufacture fountain pens? A. In 1897 I formed a copartnership with William G. Frazer under the firm name of Wm. G. Frazer & Co. We ran along under that name until August, 1899, when we incorporated as the Frazer & Geyer Company, under the laws of the State of New York.

Q5. How long did you continue? Tell us the history of the Frazer & Geyer Company? A. We incorporated in the first place with a capital of $20,000—$6,000 common stock and $14,000 preferred. Then business kept growing so fast that we outgrew our capital and in February, 1901, we increased the capital stock to $60,000. Business kept growing so rapidly that in 1902 we again increased the capital stock to $300,000. 3740

Q6. How much of it was actually issued? A. The largest amount that was issued was about $135,000, early in 1904 or the latter part of 1903.

Q7. Go on and tell all about the Frazer & Geyer Company? A. Our business was the manufacturing of fountain pen holders and gold pens, making a complete fountain pen. When I first went with Mr. Frazer we made nothing but the holders. We had our factory in Hinsdale Street, East New York. About six months after I went with him we put in a complete gold pen plant and from that time on we made the complete holder and gold pen.

Q8. What was the date when you first began making the complete gold pen? A. It was in May, 1898. Along in August, 3741
1899, the Frazer & Geyer Company began selling gold pens to A. A. Waterman of Boston and we sold him up to the 6th of November, 1899. His address then was 38 Bromfield Street, Boston, Mass. From the 13th of August, 1899, to the 15th of October, we made and sold gold pens for A. A. Waterman & Co. in Howard Street, West Somerville, Mass.

Q9. Do you know who was the "company"? A. I don't think I ever knew. I never gave it any attention. These bills were mostly settled by drafts on the Colonial Pen Company of Boston, which was the selling agent for A. A. Waterman & Co.

Q10. That is, the A. A. Waterman & Co. purported to manufacture and the Colonial Pen Company were their sole selling agents? A. They did manufacture holders and bought gold pens and assembled them in their factory at West Somerville. Their account was settled some time in December, 1900. The last bill that we sold to A. A. Waterman & Co., on the 15th of October, 1900, was finally settled in December, 1900. Then I heard that Mr. Waterman had had a disagreement with the Colonial Pen Company over some matters and he had decided to disband the firm or go out of business or whatever it was but he negotiated with Mr. Frazer, or Mr. Frazer negotiated with him, I am not sure which, and we formed a partnership, A. A.
3743 Waterman, Mr. Frazer and myself, on the 9th day of January, 1901,—the firm of A. A. Waterman & Co. of New York. This firm had the Frazer & Geyer Company manufacture all their goods for them and eventually they sold the larger part of our output; the customers that the Frazer & Geyer Company sold to direct being mostly so-called manufacturers or parties who had pens made with their own imprint.

Q11. That is to say, after the organization of A. A. Waterman & Co., Frazer & Geyer Company manufactured pens for them to sell and turned over all of their customers, except certain customers, who were known as manufacturers; is that it? A. That is correct.

Q12. And that is the relation that existed at that time be-
3744 tween A. A. Waterman & Co. and Frazer & Geyer Company? A. That was the status.

Q13. About what per cent of the product of the Frazer & Geyer Company was sold by the A. A. Waterman & Co.; do you know? A. I should say offhand from 80 to 90 per cent.

Q14. What happened after that? A. The business went along until June, 1905, early in June. In April or May of that year the directors of the Frazer & Geyer Company thought that Mr. Frazer, who was general manager, should have his salary reduced and have a contingent salary to offset the reduction, the contingent of course depending upon the profits of the Frazer & Geyer Company. Mr. Frazer seriously objected to this, and

it made more or less of a clash between Mr. Isaac E. Chapman who was president of the company and Mr. Frazer.

Q15. When the stock of the Frazer & Geyer Company was $60,000 were they making money? A. Yes, they were.

Q16. How much were they paying on the stock?

Mr. Watson: Objected to as immaterial.

A. We were paying 10 per cent. The preferred called for 10 per cent and on the common we were making from 25 to 30 per cent, is my recollection, and paying 10. We were piling up quite a substantial surplus.

Q17. Before that, when it was $20,000 how much had you made? 3746

Same objections.

A. Our profits at that time were larger in proportion. I think we were realizing possibly 50 or 60 per cent on the common stock besides paying 10 per cent on the preferred.

Q18. When was it that you increased your capital stock to $300,000? A. About February, 1902.

Q19. Did you move your factory at that time? A. Yes, about that time.

Q20. And changed your methods? A. Frazer & Gever Company had already moved from East New York to 36 Gold Street, about 1899, I think it was, and we stayed at Gold Street two or three years when our business was so large we were 3747 crowded out of there, and we could not get any additional space and we then moved to our present location at the corner of Thames and Greenwich. There we took a large floor.

Q21. About 1902, when you extended your capital stock to 300,000, of which about $135,000 was eventually issued, did you make money or lose money? A. Along in 1903 we began to lose money. Our expenses had increased and the cost of manufacturing had increased.

Q22. What happened after you began to lose money? What was supposed to be the cause of the changed conditions?

Mr. Watson: Objected to as immaterial to any issue in the case.

A. I think the additional expense that we took on there. I think they put on more help then they needed to make the quantity of goods that they were making. That made the cost of the goods run up more than it should.

Q23. Who was manager? A. Mr. Frazer.

Q24. Is it not a fact that he declared a dividend at one time when he ought not to?

Objected to as immaterial.

A. It was true that he furnished a false statement on which a dividend was declared by the directors.

3749 Q25. Did not that lead to the friction which finally led to the dissolution of the company?

Same objections.

A. Yes, that is what led to it.

Q26. Now tell us about the Chapman's connection with the Frazer & Geyer Company; when did they first come into the problem? A. They came in—Mr. Isaac E. Chapman came in a few weeks after we formed the partnership with Mr. Waterman. We had agreed to furnish capital or credit for the firm of A. A. Waterman & Co. up to $25,000 and Mr. Frazer said he had a party who would get us, or take stock enough, or get us money in some way, with which to furnish the necessary credit; and it seems to me it was only a few weeks later that he intro-
3750 duced me to Mr. Chapman and Mr. Chapman bought five or ten shares of stock, I have forgotten which, but a short time after that he bought considerable more and he kept buying stock. As we needed more capital, either he or his family or friends would buy more stock in the company. At the same time Mr. Frazer and myself were selling some stock to our friends, but nothing like the quantity that Mr. Chapman was interesting his friends.

Q27. Then Mr. Chapman was the man who put up substantially all of the money or credit that was promised when you went into partnership with Mr. Waterman; is that right? A. Practically, yes.

& Geyer Company money besides stock holdings? A. They

Q28. Did Mr. Chapman and his friends also loan Frazer

loaned $30,000 on chattel mortgage. That was in 1904, I think—1903 or 1904.

Q29. And that was renewed from year to year? A. Yes.

Q30. And was finally assumed by the Modern Pen Company? A. Assumed by the Modern Pen Company and a new mortgage given by them after the reorganization. This was also signed by A. A. Waterman & Company to my recollection; either signed or guaranteed by them.

Q31. Was A. A. Waterman & Co., also responsible on the debt secured by the chattel mortgage? A. It is my recollection that they were.

Q32. I show you a note of $10,000, dated May 2, 1904, payable on demand to the order of the estate of William L. Chapman Incorporated, signed by Frazer & Geyer Company, William G. Frazer, secretary and general manager and Hobart W. Geyer, treasurer, and endorsed A. A. Waterman & Company. In whose handwriting is the endorsement A. A. Waterman & Co.? 3752

Mr. Watson: Objected to as immaterial to the issue.

A. Mine.

Q33. Was this a part of the debt secured by the chattel mortgage? A. Yes.

Q34. And was the whole of the debt secured by notes similarly signed and endorsed? A. Yes, there was one for $20,000 to the order of Isaac E. Chapman, a similar note. 3753

Q35. When the Frazer & Geyer Company was finally organized into the Modern Pen Company what were the stock holdings proportionately; that is so say, about what proportion was held by Mr. Chapman and his friends, what proportion by you and your friends and what proportion by Mr. Frazer and his friends?

Mr. Watson: Objected to as entirely immaterial to any issue in this case, and expressly objected to as without proper foundation.

A. Mr. Chapman and his relatives and friends had about 65 or 70 per cent of the stock in addition to the loan just spoken of.

3754

Mr. Frazer had about 11 or 12 per cent; and I had about 25 per cent, in that neighborhood, myself and friends.

Q36. And Mr. Frazer and his friends? A. Mr. Frazer and his friends had about 12 per cent.

Q37. Then when did the reorganization occur?

Mr. Watson: The same objections.

A. The early part of June, 1905.

Q38. For how many months did the discussion of this reorganization continue?

Same objections.

3755 A. As far as my recollection goes it was between two and three months. I am not just sure on the length of time.

Q39. Was there a judgment obtained by Mr. Chapman against William G. Frazer? A. Yes, there was, the latter part of May or early in June, 1905.

Mr. Bacon: If you so desire I will put in evidence the certificate showing the judgment and the return of the execution unsatisfied; or I will simply read what is necessary into the record.

Mr. Watson: Read what you want to put in. It is objected to as entirely immaterial and irrelevant to any issue in this case. I think if you are going to put anything in about it, you should put in the judgment roll.

3756 Mr. Bacon: I offer in evidence the certificate in the action of Isaac E. Chapman against William G. Frazer, showing damages and costs $1677.58, filed May 31, 1905; execution returned unsatisfied by the sheriff's return filed June 3, 1905.

Mr. Watson: Objected to as entirely immaterial to any issue in this case.

Q40. I show you a paper and ask you if this was served upon you and if so by whom (handing witness a paper)? A. Yes, that was served upon me by Gratz Nathan, June 8, 1905.

3757

Q41. Was there a receiver of Mr. Frazer appointed in supplementary proceedings in this action referred to in Exhibit A-2 on June 7, 1905?

Mr. Watson: Objected to as entirely immaterial to any issue in this action and if anything is to be shown the judgment roll should be produced.

A. Yes.

Q42. And was Mr. Gratz Nathan that receiver?

Same objections and evidently this witness cannot know anything about it; and the order is the best evidence.

3758

A. Yes.

Mr. Bacon: We offer in evidence this notice and copy of an order appointing Gratz Nathan receiver in the action in the City Court of New York entitled Isaac Chapman against William G. Frazer.

Mr. Watson: Objected to as irrelevant and immaterial to any issue in this case.

Marked Defendant's Exhibit A-3.

Mr. Bacon: I offer in evidence in chronological order the various agreements between A. A. Waterman, Mr. Frazer, Mr. Geyer, Frazer & Geyer Company, A. A. Waterman & Company and the Modern Pen Company.

3759

Articles of agreement found on page 616 of the printed record on appeal in the matter of the preliminary injunction in this action, dated January 9, 1901, between Arthur A. Waterman, William G. Frazer and Hobart W. Geyer.

Objected to as immaterial and irrelevant.

Marked Exhibit A-4.

Endorsement on the same copartnership agreement, dated December 12, 1901, extending the copartnership 40 years.

Same objections.

Marked Exhibit A-5.

3760 *Hobart W. Geyer*

Memorandum of agreement found on page 636 of the record, dated August 27, 1901, between Frazer and Geyer Company, party of the first part and William G. Frazer and Hobart W. Geyer, parties of the second part.

Same objections.

Marked Exhibit A-6.

Agreement dated December 12, 1901, between Frazer & Geyer Company and A. A. Waterman.

Same objections.

Marked Exhibit A-7.

Agreement dated December 12, 1901, between Frazer & Geyer Company and A. A. Waterman & Co.

3761

Same objections.

Marked Exhibit A-8.

Agreement dated June 11th, 1904 (not in the printed book) between A. A. Waterman, William G. Frazer and Hobart W. Geyer, being a modification of the copartnership agreement of January 9th, 1901.

Same objections.

Marked Exhibit A-9.

Agreement dated February 11th, 1905, between A. A. Waterman, William G. Frazer and Hobart W. Geyer being the order of modification of said copartnership agreement.

Same objections.

3762

Marked Exhibit A-10.

Agreement dated February 11th, 1905, between Frazer & Geyer Company and Arthur A. Waterman.

Same objections.

Marked Exhibit A-11.

Temporary agreement dated May 27th, 1905, between Arthur A. Waterman and Isaac E. Chapman.

Same objections.

Marked Exhibit A-12.

Articles of copartnership, dated June 12, 1905, between Arthur A. Waterman, Isaac E. Chapman and William L. Chapman.

Same objections.

Marked Exhibit A-13.

Agreement dated July 5, 1905, between the Modern Pen Company and Arthur A. Waterman.

Same objections.

Marked Exhibit A-14.

Q43. Have you in your possession any books relating to A. A. Waterman & Company preceding January 9, 1901, if so, state what they are?

Mr. Watson: Objected to as immaterial to any issue in this case and that the books are the best evidence and the testimony of the persons that kept them and it is incompetent to prove them in the way counsel is proceeding. 3764

A. We have the books of Frazer & Company which show that we sold A. A. Waterman of 38 Bromfield Street, Boston, goods from the 18th of August, 1899, to the 6th of November, 1899, and that we sold A. A. Waterman & Company of Howard Street, West Somerville, Mass., goods from the 13th of August, 1899, to the 15th of October, 1900. These books were kept by me so that I know the entries are correct. And we also have a memorandum cash book of A. A. Waterman & Co., of West Somerville, which was brought here by A. A. Waterman at the time we formed the copartnership with him, among other books and property which he brought at that time. 3765

Mr. Watson: I wish to strike out all the witness' answer relating to the books said to have been in the Somerville concern as incompetent and immaterial.

Mr. Bacon: I offer in evidence a circular found at page 655 of the printed record.

Marked Exhibit A-15.

Q44. On the reorganization of the Frazer & Geyer Company as the Modern Pen Company did the Modern Pen Company take over the assets and assume all the liabilities of the corporation of Frazer & Geyer Company?

3766

Mr. Watson: Objected to as entirely immaterial and incompetent.

A. They did.

Q45. Do you know of your own knowledge that they paid all of the debts and took over all the assets?

Mr. Watson: The same objections and that the evidence is incompetent to prove the fact.

A. They did.

Q46. What became of the $30,000 chattel mortgage on the property, held by Mr. Chapman and the Chapman estate?

3767

Same objections.

A. That was assumed by the Modern Pen Company and has in part been paid off since.

Q47. Was a new chattel mortgage executed?

Same objections.

A. A new chattel mortgage was executed, yes.

Q48. Were the debts of the old firm of A. A. Waterman & Co. paid off?

Same objections.

A. They were paid by the Modern Pen Company.

Q49. And the assets of the old company taken over by the

3768 Modern Pen Company? A. Yes, by the Modern Pen Company.

Q50. And then a new firm of A. A. Waterman & Company was organized as indicated by the exhibits? A. Yes.

Q51. Composed of Mr. Waterman, Mr. Isaac E. Chapman and William L. Chapman? A. Yes.

Q52. And did they continue to do business at the same place? A. They did.

Q53. Then A. A. Waterman & Company manufactured the goods since the reorganization?

Mr. Watson: The same objections also that the question is leading.

3769

A. Instead of the Modern Pen Company doing the manufacturing and A. A. Waterman & Company selling, as had been the method under the former agreement between the Frazer & Geyer Company and A. A. Waterman & Company, under the new organization, the new firm, A. A. Waterman & Company, do the manufacturing and the Modern Pen Company act as selling agents for their products.

Q54. Was there any assessment made on the stock of the Frazer & Geyer Company on the reorganization; if so, state what it was.

Same objections.

3770

A. There was an assessment of $20 a share, every holder of stock in the Frazer & Geyer Company having the same option of having an equal number of shares of stock in the Modern Pen Company on depositing their certificates in Frazer & Geyer Company and $20 assessment for each share.

Q55. How long have you been the manager of A. A. Waterman & Company? A. About two years and a half, I think. I think it was in October, 1908, that I was made manager.

Q56. Have you at any time since the organization of the Modern Pen Company and the present firm of A. A. Waterman & Company manufactured or sold any goods of any description whatever bearing the name of Waterman except it was printed A. A. Waterman & Co., New York? A. I have not.

3771

Q57. Has there been even the slightest exception to that? A. No, sir.

Q58. Explain to us the John Saadi transaction? A. John Saadi had been buying our goods for a year or two when, about a year and a half ago, he came to the office and stated, and showed me a certificate showing that he had registered the trade-mark "Royal Ideal Pen" and a license had been granted by the United States Patent Office. He wanted me to make up some pens with this imprint; and as it is part of our business to make pens with imprint for customers, with their special or private imprints, and not having any idea that the Patent Office would issue a trade-mark license that was not good, we agreed to make them

3772 *Hobart W. Geyer*

up for him and did. Subsequently he gave us two more orders, which we made up.

Q59. There were three shipments in all, were there not? A. There were three shipments in all, yes.

Q60. Have you prepared a statement of the cost and profits of the shipments of the pens which were imprinted "Royal Ideal Pen"? A. Yes, I have.

Q61. Is this it (showing witness the paper). A. Yes, that is it.

Q62. Is that a correct statement of the exact number of pens sold him and the exact cost and profit?

3737 Same objections.

A. It is.

Mr. Watson: I object to that on the ground that it is not the proper way to show the profits.

Mr. Bacon: I offer the paper in evidence.

Objected to as immaterial and incompetent.

Marked Exhibit A-16.

Q63. How were the pen points marked on these fountain pens that were imprinted "Royal Ideal Pen"? A. In the No. 11 and No. 14 they were imprinted warranted 14 karat. In the No. 12 and No. 15 they were imprinted "A. A. Waterman & Co., New York." The imprint "Royal Ideal Pen" was on the holder only
3774 and not on the gold pen.

Q64. And in this statement you have not taken into account the fact that a large proportion of these holders had this imprint destroyed by Mr. Saadi before they were sold? A. No, sir, I have not.

Q65. The reason for that is because you do not know exactly how many he destroyed? A. I do not know. He gave testimony that he destroyed most of them.

Q66. All but about a gross, did he not? A. That was his testimony and I have no personal knowledge how many were destroyed.

Q67. The last shipment was December 4, 1909? A. Yes.

Q68. And the injunction was December 17th, was it not? A. Yes, about those dates.

Q69. Did he return a good many of the gold pens imprinted A. A. Waterman & Co.? A. He returned something over a gross, about fifteen dozen, I think.

Q70. Did he return more than the last shipment? A. Yes.

Q71. Did you have any idea when you were selling these pens to Mr. Saadi that you were infringing the plaintiff's trade-mark "Ideal"?

Objected to as immaterial.

A. Not the slightest.

3776

Q72. Have you at all times recognized the right of the plaintiff to its trade-mark "Ideal"? A. Yes, I have.

Q73. And have never knowingly infringed it? A. This is the only time that I have ever imprinted it and that was certainly through ignorance.

Q74. At all times during this litigation and in the preceding litigation, in the New York State Court in the action of Chapman against the L. E. Waterman Company, did you know that in open court and in counsel's brief they had admitted and alleged the validity of the plaintiff's trade-mark Ideal? A. Yes.

Q75. Before the beginning of this action? A. Yes.

Q76. Did Mr. Saadi pay for these goods?

Objected to as immaterial.

3777

A. He paid for the first two lots but not for the last lot.

Q77. And he still owes you something? A. Something over $200; about $230 I think.

Q78. You have written him for it a large number of times as indicated by the letters in evidence? A. I have written him and also the bookkeeper has written him regularly.

Q79. And drew on him once?

Mr. Watson: Objected to as immaterial and an intent to pad the record.

A. Yes.

3778 *Hobart W. Geyer*

Q80. Has the defendant at any time ever advertised its products as Waterman pens or Waterman's pens without the initials A. A. & Co.? A. No, sir, they always use the full firm name of A. A. Waterman & Company.

Q81. Tell us about the Wolfson pen advertisement, which is already in evidence; was there ever more than one issue of that advertisement? A. There was one issue, in two papers of even date. This ad was put in the paper without our knowledge, and until they got a letter from the L. E. Waterman Company and then a copy of the ad to us, we knew nothing about it. They requested us to pay half of the cost of the ad and I wrote them that if they would advertise the pens as our pens made by
3779 A. A. Waterman & Co. we would be glad to pay them half of it, and I understood from our salesman that they were to put it in the paper the following week.

Mr. Watson: I object to it and I move to strike out the last part of the answer an entirely hearsay.

A. (Continued.) When their bill came for the ad I took it for granted that it was for the ad in the second week's paper and allowed it.

Q82. You wrote them very emphatically that they had done wrong, didn't you? A. Yes.

Q83. As indicated in the letters in evidence? A. Yes.

Q84. Did you ever sell any goods to the Standard Drug Com-
3780 pany at Cleveland? A. No, sir, never.

Q85. Did you ever hear of them until they were sued by the L. E. Waterman Company? A. No.

Q86. You do sell to Mr. Teller? A. Sol Teller, yes.

Q87. What relation had he to the Standard Drug Company?

Mr. Watson: Objected to as not within the knowledge of this witness and as incompetent.

A. He stated to me that he was a tenant.

Mr. Watson: I move to strike out the answer as incompetent.

Mr. Bacon: I offer in evidence the correspondence between Mr. Teller, the Standard Drug Company and the Modern Pen Company with relation to the Cleveland litigation, found beginning at page 481 of the printed record.

Mr. Watson: I ask for the originals or copies.

Mr. Bacon: We have them here. The first is from S. Teller to H. Geyer, dated Cleveland, Ohio, November 10, 1909.

Objected to as immaterial and irrelevant to any issue in this case.

Marked Exhibit A-18.

Modern Pen Company to S. Teller, November 12, 1909. 3782

Same objections.

Marked Exhibit A-19.

Standard Drug Company to Modern Pen Company, November 12, 1909.

Same objections.

Marked Exhibit A-20.

Modern Pen Company to Standard Drug Company, November 18, 1909.

Same objections.

Marked Exhibit A-21.

Standard Drug Company to Modern Pen Company, November 19, 1909. 3783

Same objections.

Marked Exhibit A-22.

S. Teller to H. Geyer, November 19, 1909.

Same objections.

Marked Exhibit A-23.

Modern Pen Company to S. Teller, November 23, 1909.

Same objections.

Marked Exhibit A-24.

Modern Pen Company to Standard Drug Company, November 23, 1909.

Same objections.

Marked Exhibit A-25.

S. Teller to H. Geyer, December 15, 1909.

Same objections.

Marked Exhibit A-26.

Modern Pen Company to S. Teller, December 17, 1909.

Same objections.

Marked Exhibit A-27.

Mr. Watson: Counsel for plaintiff calls for the production of all the letters addressed to the Standard Drug Company or to its attorney T. H. Bushnell, in reference to this controversy.

3785 Mr. Bacon: We will produce everything. I offer in evidence the Cleveland complaint the action of L. E. Waterman Company against Standard Drug Company, dated October 9th, 1909.

Objected to as immaterial to any issues in this case and unnecessarily padding the record.

Marked Exhibit A-28.

Mr. Bacon: I offer in evidence the permanent injunction issued in the Cleveland litigation, L. E. Waterman Company against Standard Drug Company, found on page 117 of the record and entered on the 14th day of December, 1909.

Marked Exhibit A-29.

3786 Q88. Did you receive a copy of this decree printed with the notice thereon from any of your customers? A. Yes.

Mr. Bacon: I offer in evidence printed notice attached to the printed copy of the Cleveland decree, found on page 14 of the printed record in Chapman against L. E. Waterman Company.

Mr. Watson: I object to the notice as immaterial to any issue in this case.

Marked Exhibit A-30.

Adjourned to Friday April 14, 1911, at 10:30 A. M.

*Hobart W. Geyer* 3787

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant. 3788

Met pursuant to adjournment at the office of Alexander S. Bacon, 37 Liberty Street, New York, April 14, 1911, at 10:30 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Complainant.

Alexander S. Bacon, for Defendant.

HOBART W. GEYER, resumes the stand.

*Direct-examination continued by Mr. Bacon:*

Mr. Bacon: I offer in evidence certificate of continued use of the firm name, found on page 567 of the printed record. 3789

Mr. Watson: Objected to as immaterial, irrelevant and incompetent and in that it was filed too late.

Marked Exhibit A-31.

Q89. This certificate A-31 was duly published according to law? A. Yes, sir.

Q90. At about the date of the certificate? A. Yes.

Mr. Bacon: This certificate was filed February 21, 1910, and publication began on March 11, 1910, and concluded April 1, 1910, as indicated in Mr. Watson's affidavit at page 567 and page 606 of the printed record.

I produce some additional letters in the matter of the Cleveland litigation. One letter is from Standard Drug Company to the Modern Pen Company, dated November 18, 1909.

Objected to as immaterial and having nothing to do with the issues in the case.

Marked Exhibit A-32.

Letter from T. H. Bushnell to Modern Pen Company, December 1, 1909.

Same objections.

Marked Exhibit A-33.

Modern Pen Company to Bushnell, December 2, 1909.

3791 Same objections.

Marked Exhibit A-34.

Q91. How did it happen that these did not get into the printed record?

Same objections.

A. These were filed under the Standard Drug Company instead of the Teller file and were not found until too late to go in the printed record.

Mr. Bacon: I offer in evidence a letter from L. E. Waterman Company to Arthur J. Ryan, dated January 13, 1910, found at page 491 of the record.

3792 Same objections.

Marked Exhibit A-35.

Letter from L. E. Waterman Company to George M. Hammell, dated February 1, 1910.

Same objections.

Marked Exhibit A-36.

Also a letter from C. H. Dungan to A. A. Waterman & Company, dated June 22, 1910.

Same objections.

Marked Exhibit A-37.

The reply thereto, Modern Pen Company to C. H. Dungan, June 25, 1910.

Same objections.

Marked Exhibit A-38.

Mr. Bacon: It is understood that everything is objected to.

Q92. Have you prepared a memorandum of the different styles of L. E. Waterman pens and A. A. Waterman pens, with their corresponding retail prices and discounts? A. I have.

Q93. Are these they (handing witness the paper)?

Mr. Watson: Objected to as immaterial and irrelevant and nothing to do with the issues in this case?

A. Yes. 3794

Q94. Do these truthfully state the corresponding styles of pens, their true retail prices and their respective discounts?

Same objections, also as incompetent.

A. They do, in the pens from the cheapest up to the highest, in the plain pen, without any mountings or anything of that sort.

The memorandum above referred to is offered in evidence and marked Exhibit A-39.

Mr. Watson: Objected to as immaterial, irrelevant and incompetent to any issue in this case.

Mr. Bacon: I offer in evidence a letter from Mr. A. C. Tucker to D. C. Percival & Co., April 4, 1910.

Objected to as incompetent, immaterial and irrelevant and not the best evidence. 3795

Marked Exhibit A-40.

Q95. I show you what purports to be a circular addressed to the re-organization committee of the Frazer & Geyer Company, dated April 26, 1905, and ask you if that circular was sent out (handing witness the paper)?

Same objections.

A. Yes.

Q96. Was the re-organization finally carried through under the scheme of this circular?

Same objections.

A. No, it was not. It was changed in that they assessed the stock at $20 instead of $15 per share.

The circular referred to is offered in evidence and marked Exhibit A-41.

Same objections.

Q97. I call your attention to the testimony given by Mr. Charles E. Trory of Crestline, Ohio, and ask you if you have prepared a memorandum of his entire account and if this is it (handing witness the paper)?

3797 Objected to as incompetent, irrelevant and immaterial.

A. Yes, that is it.

Q98. Did he ever send back any pens for repair from among those that he bought of you, as far as you can determine?

Same objections.

A. We cannot tell from our records that he ever sent back any of our pens for repairs and we have no record whatever of his having sent any back for credit; and what few pens came back to be repaired we charged for, which shows on the face that the trouble was caused by an accident or it was a pen not of our make.

3798 Mr. Watson: I move to strike out the speech of this witness as volunteered and not responsive.

The memorandum above referred to is offered in evidence and marked Exhibit A-42.

Objected to as immaterial and irrelevant.

Q99. I call your attention to Exhibit No. 9, being a notice of the Modern Pen Company, dated April 1, 1908, and ask you to state the circumstances under which that notice was issued?

Mr. Watson: Objected to as immaterial and irrelevant to any issue in this case. The circular speaks for itself.

A. About that time Mr. Martling, who was manager for the Modern Pen Company, thought he would drop the name A. A. Waterman & Co. from the self-filling and middle joint line and use it on our cheaper line of pens, which we imprinted "The Lincoln." At that same time we got out a new sheet or list of the proposed new imprinting of the Lincoln pen.

Q100. Is this it (handing witness the paper)? A. That is it.

Mr. Bacon: I offer it in evidence, being a notice containing a picture of seven Lincoln pens imprinted as follows: "Lincoln Fountain Pen made by A. A. Waterman & Co., New York. Patented October 11, 1904."

Objected to as immaterial, irrelevant and incompetent. 3800

Marked Exhibit A-43.

Q101. Was Exhibit 43 sent out with the same catalogues as Exhibit 9? A. Yes, every catalogue that had Exhibit 9 in had Exhibit 43 in it.

Q102. Was there ever a time when you abandoned the use of the name A. A. Waterman & Co. on Modern pens?

Same objections, and also that the notice speaks for itself.

A. No, sir.

Q103. For how long a period were these notices, Exhibit 9, sent out in circulars? A. I should think not over two or three months on the outside. 3801

Q104. And you continued all that time to imprint Modern Pens "A. A. Waterman & Co."? A. Yes.

Q105. And this scheme of Mr. Martling's was abandoned and never carried into execution? A. Yes.

Q106. You know Granger Freres of Montreal? A. Yes.

Q107. They sell A. A. Waterman goods? A. They are one of our customers and sell our goods, yes.

Q108. Do they also sell L. E. Waterman goods? A. I understand that they do.

Mr. Watson: I move to strike out the answer as incompetent.

Q109. Do they hold any relation to you whatever different from that of any other purchaser of your goods? A. They do not; they are simply a customer of ours.

Q110. Is that true of Warwick Brothers & Rutter, Toronto? A. It is.

Q111. They hold the same relation to the defendant that Granger Freres do? A. Yes.

Q112. An advertisement has been put in evidence from St. John, New Brunswick; did you ever see that advertisement or know anything about it? A. I did not until I saw it here when it was put in evidence.

3803 Q113. Do you sell pens in New Brunswick at St. Johns? A. Yes.

Q114. To what firm do you sell there? A. We sold several, but the one that I remember particularly now is Barnes & Co., who had the ad in the paper.

Q115. As one of your customers? A. As one of our customers.

Q116. This advertisement of Barnes & Co. was the advertisement of one of your customers? A. Yes.

Q117. And you knew nothing about it until you saw it in evidence? A. I did not; no, sir.

Q118. I will ask you who it is that gives instructions to salesmen nowadays in the Modern Pen Company affairs? A. I do.

Q119. Anybody else? A. No, sir.

3804 Q120. The Chapmans do not have anything to do with the manufacture of pens by A. A. Waterman & Co.? A. No.

Q121. Or the practical business affairs of the Modern Pen Company? A. No; they look after the financing; that is all.

Q122. And they are actively engaged as members of the corporation of the Merritt & Chapman Derrick & Wrecking Company? A. Yes.

Q123. And they very rarely pay any attention to the Modern Pen Company or A. A. Waterman & Company? A. Yes.

Q124. During the time that you have been manager what instructions have you given to salesmen in relation to the sale of pens? A. I have always instructed them to sell our pens as pens

3805

made by A. A. Waterman & Co., and to instruct their customers to sell them the same way. Those who were with us before I took charge I have notified of the injunction, I think it is September 3, 1898, which distinctly stated that we had that right.

Mr. Watson: I object to that statement as the injunction speaks for itself and contains no such right.

Mr. Bacon: These are the instructions that he gave the agents.

The Witness: And I have always impressed it upon them that our pens were so much better than the pens made by L. E. Waterman Company, that we certainly did not want anyone to have the slightest chance of getting them mixed up with the Waterman Ideal pens.

3806

Q125. And the defendant advertises its wares largely? A. They do, yes.

Q126. And always as A. A. Waterman & Co. goods? A. Yes.

Q127. Have you ever in any single instance advertised as merely Waterman goods? A. We have not.

Q128. Such an advertisement would be advertising L. E. Waterman goods as much as your own? A. That is my opinion of it and the way I have always looked at it. In advertising we want to advertise our own and not the other party.

Q129. Have you ever, either directly or indirectly, sanctioned an advertisement by any customer of yours other than A. A. Waterman goods? A. No.

3807

Q130. Did you ever see or hear or know of any advertisement made by Warwick Bros. & Rutter of Toronto? A. No, sir.

Q131. The first that you knew of their advertisement was when it was found in the evidence? A. Yes. I don't think that a copy of the ad was put in. I don't remember it.

Q132. You have not seen it? A. I don't remember having seen it at all. I see very few of the ads that our customers put in. I do not make it a practice to follow them up at all.

Q133. Did you have any complaint from any customer that they bought A. A. Waterman & Co. goods under a misapprehension that they were L. E. Waterman goods? A. I don't remember any now.

Q134. Don't you remember one or two in the correspondence of Mr. Bartlett where he said that some L. E. Waterman agent had been around there? A. I think there was, yes. There was such a mass of correspondence there that I have forgotten just what was in it.

Q135. And outside of that one or possibly two letters in the Bartlett correspondence, you have no recollection of ever having known a customer who even claimed that he had been deceived?
3809 A. No.

Q136. You were with me in Boston on the day the testimony was taken? A. Yes.

Q137. You heard Mr. Chaplin testify? A. Yes.

Q138. And you were with me when we went around to the store of the plaintiff at 8 School Street? A. Yes.

Q139. State what happened when we went in there? A. At the hearing Mr. Chaplin had testified on cross-examination that they had quantities of plain pens marked Waterman without the word "Ideal" on them; so at recess we went around and talked to the saleslady, Miss Wood, who also testified at the hearing. I told her that we would like to purchase a Waterman pen with just the imprint Waterman on it. She stated that they did not
3810 have any such pens in the store and she took one out of the case and she said, "Every pen that we have is imprinted Ideal, the same as this one." We asked her two or three times if she was sure that she had no pens with just the imprint Waterman, and she reiterated that they were all imprinted Ideal.

Mr. Watson: I move to strike out the answer as incompetent and immaterial and not the best evidence; and further that Miss Wood mentioned by the witness, and Mr. Chaplin, who were examined and testified in this case, produced pens from the stock at 8 School Street, showing the marking of Waterman alone on the pen of the plaintiff's company.

Q140. Were the pens so produced plain pens or all covered with metal?

Objected to as immaterial and irrelevant.

A. I did not see them, but I understood from the testimony that they were all covered with metal.

Mr. Watson: I move to strike out the answer as incompetent.

Q141. And you were not present in the afternoon when they were reproduced to be examined again? A. No, I did not go back to the afternoon hearing.

Q142. Did the young lady say she never had seen or heard of 3812
pens marked Waterman only?

Mr. Watson: Objected to as incompetent, irrelevant and immaterial and further on the ground that the witness was produced and examined in this case.

A. Yes, she did.

Q143. Did Miss Wood seem to be flustered when we went in to see her?

Objected to as immaterial and irrelevant.

A. She seemed to be rather surprised to see us so shortly after having left us at the commissioner's.

Q144. Did she smile and seem to be glad to see us? A. She 3813
did, yes.

Q145. For how long do you warrant the rubber sacks of the self-filling pens?

Objected to as immaterial and irrelevant.

A. We guarantee them for two years, but our experience has been that they last anywhere from four to seven or eight years.

Q146. Are many of them ever returned as defective or leaking? A. A very small percentage of what we sell.

Q147. Very rarely? A. Yes.

Mr. Bacon: I offer in evidence a translation of the Italian complaint found at page 385 of the printed record.

3814 *Hobart W. Geyer*

Mr. Watson: Objected to as immaterial, irrelevant and incompetent.

Marked Exhibit A-44.

Q148. Has A. A. Waterman & Co. of Chicago anything to do with A. A. Waterman & Co., of New York? A. No, sir.

Q149. Do you sell goods to Mr. Basheim of Cleveland? A. We have sold him; not within the last month or two, but up to that we sold h[illegible] regularly.

Q150. Do you know anything about his having a sign out as the agent of "The A. A. Waterman Company"? A. No, sir, I never heard of it, until it was stated in the testimony in this suit.

3815 Q151. Did you have anything to do with the attempted purchase of A. A. Waterman & Company by the L. E. Waterman Company in 1907 and 1908?

Mr. Watson: Objected to as incompetent, irrelevant and immaterial.

A. As a director of the Modern Pen Company this matter was brought up at our directors' meetings and discussed quite fully and then one Sunday morning it was arranged for Mr. Frank D. Waterman and Mr. Ferris to meet us at the factory so that they could examine our plant. I met them. There was present Mr. Frank D. Waterman, Mr. Ferris, Mr. William L. Chapman, Mr. Martling and myself.

3816 Mr. Watson: I move to strike out the answer as incompetent, irrelevant and immaterial and having no connection with the issues in this case.

Q152. What was said and done at that time? A. Mr. Ferris seemed to be the one who paid most attention to the plant, but he did not go into it very carefully. He said it was the same as most any pen plant. Of course, it was not running, so that they could only get an idea of just what machines we had on the floor. There was nothing to show what dies we had or special tools or anything of that sort. There was no conclusion come to then. They left and as I remember, it now were to let Mr. Chapman hear from them later on.

3817

Mr. Watson: I move to strike out the answer as incompetent, irrelevant and immaterial to any issue in this case.

Q153. Was anything said during that examination of the machinery as to who was to buy it?

Objected to as incompetent, irrelevant and immaterial to any issue in this case.

A. I don't remember whether that was brought up or not; the understanding was so clear that it was the L. E. Waterman Company that was figuring on it, that there was nothing special to draw to my particular attention, to impress it on my memory.

3818

Q154. Was anything said at that time or at any time about the Aiken-Lambert Company buying it? A. No.

Q155. Did you ever see the two draft agreements that were prepared by Mr. Watson, the attorney for the plaintiff in that negotiation.

Objected to as incompetent, irrelevant and immaterial.

A. Yes, they were used at the meetings of the directors of the Modern Pen Company.

Mr. Watson: I move to strike out the answer as immaterial and irrelevant and having no connection with the issues in this case.

3819

Mr. Bacon: I will offer in evidence in chronological order the correspondence in relation to this purchase and the infringement of the patent, found at page 439 *et seq.*, of the record. Letter from Robert Elliott to Samuel S. Watson, dated March 5, 1908.

Objected to as incompetent, irrelevant and immaterial, having no connection with the issues in this case.

Marked Exhibit A-45.

Letter from Samuel S. Watson to W. L. Chapman, dated March 7, 1908.

Same objections.

Marked Exhibit A-46.

3820 William L. Chapman to Samuel S. Watson, March 19, 1908.

Same objections.

Marked Exhibit A-47.

William L. Chapman to Samuel S. Watson, March 28, 1908.

Same objections.

Marked Exhibit A-48.

Watson & Raymond to William L. Chapman, March 30, 1908.

Same objections.

Marked Exhibit A-49.

3821 Alexander S. Bacon to L. E. Waterman Company, April 29, 1908.

Same objections.

Marked Exhibit A-50.

L. E. Waterman Company to Alexander S. Bacon, April 30, 1908.

Same objections.

Marked Exhibit A-51.

William L. Chapman to Samuel S. Watson, May 7, 1908.

Same objections.

Marked Exhibit A-52.

Samuel S. Watson to William L. Chapman, May 8,

3822 1908.

Same objections.

Marked Exhibit A-53.

William L. Chapman to Samuel S. Watson, May 11, 1908.

Same objections.

Marked Exhibit A-54.

Alexander S. Bacon to L. E. Waterman Company May 19, 1908.

Same objections.

Marked Exhibit A-55.

L. E. Waterman Company to Alexander S. Bacon, May 21, 1908.

Same objections.

Marked Exhibit A-56.

Alexander S. Bacon to L. E. Waterman Company, May 26, 1908.

Same objections.

Marked Exhibit A-57.

Mr. Bacon: I offer in evidence the two draft contracts found at pages 427 and 444 of the printed record.

Contract of the Modern Pen Company and others with Aiken-Lambert Company, dated (blank) December, 1907, on page 44. 3824

Same objections.

Marked Exhibit A-58.

Modern Pen Company and others with the Modern Pen Company of New York, dated (blank) December, 1907.

Same objections.

Marked Exhibit A-59.

Mr. Bacon (to witness): Will you search and see if you can find any other letters in relation to this attempted purchase, especially during the year 1907?

Q156. In the Saadi litigation the complaint and decree were in all substantial respects similar to that of the Cleveland decree, were they not? 3825

Mr. Watson: Objected to as immaterial; the complaints speak for themselves; and as not the best evidence.

A. Yes.

Q157. Do you know anything about this I. Waterman that has been mentioned? A. No, sir. The report went through the trade that the party named was not Waterman at all, but had some kind of a Hebrew name, as his real name.

Mr. Watson: I move to strike out the answer as incompetent and irrelevant.

Q158. Do you know anything about the pens that he made?

3826

Same objections.

A. My recollection is that it was a cheap holder with a brass pen in it.

Q159. What do you know about this Butler catalogue concerning which there has been some testimony? A. I never saw it. Mr. Davies, the buyer for Butler Bros., telephoned me that their St. Louis house had received a letter from the attorney of L. E. Waterman Company in regard to the way they advertised our pens and he said it was done through some carelessness of some employee of Butler Bros. of St. Louis and that the catalogue would be destroyed and they would advertise them cor-

3827 rectly under the name of A. A. Waterman & Company.

Q160. It only appeared in one issue in St. Louis?

Mr. Watson: Objected to as leading and highly improper in form and not the best evidence and I move to strike out the answer, as this witness has no personal knowledge whatever.

A. As far as I know.

Q161. Do you remember the sale of pens by the defendant to the plaintiff? A. Yes.

Q162. What do you know about that? A. My recollection is that this was in November or December, 1907; Mr. William L. Chapman wanted to know if we were in such shape that we could

3828 make up something like fifteen hundred pens for the L. E. Waterman Company, for if we could do it he could get the order from them.

Mr. Watson: I move to strike out the answer as incompetent and not the best evidence.

A. (Continued.) We told him that we could and in a day or two the L. E. Waterman Company sent down a sample pen and wanted us to figure on what price we could make it for in a quantity of fifteen hundred. I took the pen to Mr. Van Valer, the superintendent of our shop, and he examined it carefully and we weighed the pen and we decided that we could make them to sell for something like, my recollection is, $36 per gross, about

25c apiece. Mr. Van Valer examined the pen carefully to see what kind of iridium it had on the point, as of course, this makes quite some difference in the cost.

Mr. Watson: I move to strike out the answer as incompetent and immaterial, and not the best evidence.

A. (Continued) And this pen had manufactured iridium.

Mr. Watson: I move to strike out the answer as it is not shown that this witness had any knowledge of such matters and it is not the best evidence.

A. (Continued.) We returned the sample with the price and in a few days Mr. Chapman received an order. My recollection is, 3830 the order itself was signed by Aiken-Lambert & Company and they sent down another gold pen in the place of the one which we had returned. This second sample had native iridium on it, but as we had given the price on the samples with manufactured iridium, we made the pens up with manufactured iridium. The pens were delivered and eventually they were paid for by the personal check of Mr. Ferris.

Q163. They never made any complaint about them? A. No.

Mr. Watson: I move to strike out the answer of the witness as incompetent, irrelevant and immaterial to any issues in this case.

Q164. How many patents are now owned or controlled by the 3831 defendant in the manufacture of pens? A. I am not exactly positive, but I would say from ten to fifteen. We have quite a big bundle of them there in the safe.

Q165. Have you been actively engaged in the manufacture of pens personally, the superintendence of the factory? A. Yes, I have.

Q166. For how many years have you been manufacturing pens? A. About thirteen years.

Q167. The Modern Pen Company makes the entire pen, does it? A. The Waterman Company make the pens.

3832

Q168. A. A. Waterman & Co.? A. Yes.

Q169. They do the manufacturing? A. Yes.

Q170. And they make pen points? A. Yes, the pen point and the holder and all parts complete except for fancy pens, we do not make the mountings; we buy them and put them on ourselves.

Q171. Will you give us in as few words as possible a description of the manufacture of the pen point?

Mr. Watson: Objected to as immaterial to any issue in this case.

3833

A. In making gold pens we buy fine gold bearing the stamp of the United States Assay Office, fine silver and pure copper, and then alloy it to 14 karats. After it is alloyed and melted down—where we have new gold like that we have to melt it twice so as to have the parts thoroughly mixed, have it thoroughly alloyed—then we roll it into a ribbon. A small blank quite thick is cut out of the ribbon. Then the next process is having the iridium melted right into this gold.

Q172. Where did you get your iridium? A. We have several sources of supply. Part of it through the American Platinum Works; some from Baker & Company. We have two or three other people who import direct and we buy it from them.

Q173. Do you use all that you buy? A. No, part will run 10 per cent waste and some of it will run perhaps 60 per cent

3834

waste. It is only the best of it that we can use on our pens.

Q174. Can anybody make this selection from the iridium of commerce or does it require specially skilled workmen?

Mr. Watson: I object to this line of testimony as entirely immaterial and irrelevant to any issue in this case.

A. It takes a man who has been educated up to it through years of having handled it and knowing the grade. It needs probably the best expert in the business to select proper iridium.

Q175. How many men do you have to perform that one duty; more than one? A. In buying it, our superintendent, Van Valer is the expert who attends to that.

Q176. In selecting the proper points to be used? A. In selecting the proper iridium for use and putting it on the blank; we have one man who does nothing but that work.

Q177. And he is a high priced expert? A. He is a high priced expert, a man who has given practically all his life to it and has the reputation of being the best pointer in the business.

Q178. After it is pointed what is done? A. Those small blanks are put through rolling mills and rolled out to the necessary size and thickness, when they are cut out with a cutting-out die to the requisite shape, while they are in the flat. The next process, as I remember it, is imprinting the name and piercing the pen. After that they are put into another press with 3836
special tools that we call the raising tools, to raise to the proper oval shape. They are then slit.

Q179. Do you have any special or exclusive process in slitting? A. In slitting our pens we have a special machine which starts the slit from the pierce towards the point, so that when the pen reaches the slitter he has a guide to meet this slit where it is started from the pierce hole instead of having to go way up to the pierce hole before he stops slitting, as is done in other shops.

Q180. Is this method exclusive to your shop? A. It is and the necessity for a straight slit is shown in the fact that if a pen is not slit straight or properly one point is liable to override the other, thereby producing a constant clicking when the pen is in 3837
use. After being slit the pen goes to the setter-up and from the setter-up they go to the grinders. Expert grinders can grind from sixty to seventy pens a day. From the grinders they go to the polishers and are then practically complete. After they come from the grinders they are subjected to inspection to see that they are right and then they are inspected finally, after they are finally polished.

Q181. There are about fifteen different processes are there not in the manufacture of the gold point.

Same objections.

A. I think there are at least that.

Q182. And how many different machines? A. Something like twelve or fourteen.

Q183. You have been, in your connection with Frazer & Geyer Company and A. A. Waterman & Company, manufacturing pens continuously for how many years? A. Thirteen or fourteen years.

Q184. Then are you willing to say as to how your pens, as so manufactured, and as just described, compare with other pens on the market, price for price?

Objected to as immaterial.

3839 A. Our pens are the best pens that can be made. There are none better and few of them that are anywhere near as good as ours.

Q185. Have you any exclusive machines that are used by you and not by any other pen makers? A. We have several. One is the slitting machine that I referred to. We also have a hydraulic press for tempering our gold pens which nobody else uses. In describing the process of manufacture I omitted tempering. The pens are tempered the first thing after the small blank is rolled out to the required thickness. The pens tempered by this process are patented and we are the only ones that have this patent, it having been taken out by ourselves and used by us exclusively.

Q186. In the present state of the art is it possible to make a
3840 better pen than that manufactured by A. A. Waterman & Co.?

Mr. Watson: Objected to as entirely incompetent and not within the knowledge of this witness.

A. No.

Q187. And you are familiar with all the pens manufactured in this country? A. Practically, yes.

Q188. Hundreds come in every week for repairs? A. Yes.

Q189. And they are all under your supervision? A. Yes.

Q190. Kindly describe the manufacture of the holders, stating first how long you have been manufacturing pen holders? A. I have been manufacturing pen holders since I first went into the business in 1897.

Q191. Give us briefly the process of manufacturing the holders. What do you begin with?

Mr. Watson: I object to all this line of testimony as immaterial to any issue in the case.

A. In making rubber holders the different parts are made by different workmen, practically working all at the same time. One turner will be turning caps, another will be turning barrels and another will be making the feeds.

Q192. To begin with what is your raw material? Do you manufacture the rubber or do you buy manufactured rubber? A. We buy vulcanized rubber, what we call rough stock. It is simply vulcanized into something near the shape that we require it for the different styles of holders. 3842

Q193. From whom do you buy? A. We buy mostly from the American Hard Rubber Company.

Q194. Can any better rubber be produced in the United States? A. No, the stock we buy from them is made in Akron and is considered the best quality of rubber stock that can be made.

Q195. In the different processes of manufacturing the holder do you use expert workmen? A. Yes.

Q196. The best that can be obtained? A. Yes, we pay the highest wages of any shop in the business.

Mr. Watson: I move to strike out all this discussion as entirely immaterial and incompetent. 3843

Q197. Take an ordinary under-the-finger-joint pen such as is the leading line of Ideal pens. It consists does it not, of the barrel, the section, the feed and the point? A. And the cap, five parts.

Q198. When you manufacture these holders do you manufacture a lot of barrels and a lot of the sections and then put them together or are they made individually one after the other?

Mr. Watson: I object to all this testimony as immaterial and move to strike it out.

3844 *Hobart W. Geyer*

A. The barrels are all turned and then each barrel has a section fitted to it individually.

Q199. The section is the part into which the feed goes? A. Into which the feed and pen go.

Q200. Then are the feeds manufactured separately? A. Yes.

Q201. Are they put into the sections as individual feeds or will one go into any of its class? A. They are fitted indidually.

Q202. That is to say that in every instance the holder after having been manufactured has an individual section fitted into it; and the section has an individual feed fitted into it? A. Yes.

3845 Q203. And although other feeds or sections might fit it is not intended that it should? A. Yes.

Q204. Does it take any machinery to assemble the pens after these parts are made? A. No, that is hand work.

Q205. Is it considered a very important part of the manufacture? A. Yes, we have to be particular that they are fitted fitted together as they should be. It requires expert labor to do that right.

Q206. Do you employ any labor except expert labor in the manufacture of any part of your pen; if so, state what part is not expert? A. No, they are all expert. We have to put on help at times and break them in and make experts of them. A green man doing that work, it has to be gone over by an expert

3846 before it passes.

Q207. Then generally speaking your entire force in the active manufacture of the pens and holders is composed of experts? A. Yes, most of our factory help have been with us anywhere from five to twelve years.

Q208. Have you picked out a few letters of commendation, and the like, of recent date? A. Yes.

Q209. And are these they (showing the witness papers)? A. Yes.

Mr. Bacon: We offer in evidence a few letters of commendation of the pens made by A. A. Waterman & Co.

Q210. Did you ever solicit any of these? A. I did not.

Q211. Did you ever have any puzzle device or offer any reward for commendation? A. No, sir.

Mr. Bacon: I offer thirty-nine letters of commendation.

Objected to as incompetent.

Marked Exhibit A-60.

Mr. Bacon: I also produce nineteen letters of denunciation of the plaintiff's pens.

Objected to as incompetent and not the best evidence.

Marked Exhibit A-61.

Each letter in this exhibit relates to Ideal pens, 3848
whether it so states in the letter or not.

Q212. What do you know about the alleged trouble with the mail up in Montreal? A. I don't know anything about that.

Q213. When dealers call for your pens what do they call for? A. As a general thing they call for self-fillers or middle joints or end joints. Nine times out of ten however they order them by the number without designating.

Q214. Have you ever had any trouble with middle joint pens leaking? A. Not that I know of. We have had very few complaints of them that reached me.

Q215. And if it does leak at the middle it does not get on your fingers; is that it? A. Yes.

Q216. Have you had any special trouble with the head coming off on the self-filler? A. Four or five years back, in the old concern, there used to be more or less, because they were not made as heavy or as strong as they should be, but in the last two or three years that has been overcome almost entirely. 3849

Q217. You make a larger head? A. Make a larger and heavier head.

Q218. How is the head connected with the sack? A. There is what we call a screw-plug that one end of the sack is fastened to and the head is fastened on to the other end of that screw-plug.

Q219. And the sack is fastened on to the screw-plug? A. Yes.

3850

Q220. How is it fastened? A. It is cemented on and tied with white silk.

Q221. Then you are continually improving the quality of your pens? A. Yes, we are always experimenting and improving all along the line.

Q22. And you endeavor to make each pen better than the last one? A. Yes.

Q223. Do you have any complaints that pens manufactured by A. A. Waterman & Co. are, as Mr. Kernan said, weak in construction and do not write? A. No, sir, we do not, only once in awhile people will get hold of a gold pen that does not just suit their style of writing and when they get a pen that does

3851 suit them in place of it, the trouble is entirely overcome. It is not a structural fault or a fault of the pen in any manner. It is simply that they have not had a gold pen that suited their hand.

Q224. And they frequently come to exchange the pen so as to have it suited to their individuality? A. Quite a number of times, yes.

Q225. Do you know whether the Day factory at Seymour, Connecticut is devoted exclusively to the manufacture of rubber pen holders? A. I have not been there myself but from those who have been there, one man, who is a relative of the Days, who at one time worked for us, states that their principal business is making Ocean cables.

3852 Mr. Watson: I move to strike out the answer as incompetent.

A. (Continued.) I think their business in pen holders has increased though considerably since I have known anything about them, in the last ten or twelve years.

Q226. That is only a small part of their business? A. I do not know anything about the proportion of it.

Q237. Do you remember Exhibit 10 and Exhibit 7? Exhibit 10 being the L. E. Waterman pen which sells for $2.50. Do you remember how much Exhibit 7 sells for? A. I don't remember what Exhibit 7 is. (The witness examines Exhibit 7.) Exhibit 7 retails for $2.50.

Q228. It is an A. A. Waterman is it? A. No, that is an L. E. Waterman Ideal.

Q229. I must have got them mixed up then. Exhibit 10; is that an Ideal too (showing witness exhibit)? A. No, this is an A. A. Waterman pen that retails at $1.

Q230. They are both under the finger joint pens? A. Yes.

Q231. And are they of the same grade?

Same objections.

A. Practically. The No. 10 has a somewhat smaller gold pen in it than Exhibit No. 7.

Q232. The holder is practically the same?

3854

Objected to as the holders speak for themselves.

A. The holder is practically the same.

Q233. Do you sell to J. H. Ailman & Co. of Boston? A. Yes.

Q234. Where is their place of business? A. 10 Bromfield Street.

Q235. Do you know whether they were there before L. E. Waterman went to 8 School Street? A. I am not sure. I think they were there considerably many years before the L. E. Waterman Company moved to 8 School Street.

Mr. Watson: I move to strike out the answer as incompetent and immaterial.

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Q236. Do you sell to Lazarus of Macon, Ga.? A. Yes.

Q237. How long have you been selling to him? A. Eight or nine years. The old concern sold before the reorganization. That is my recollection.

Q238. There is no question about his knowing all about the difference between the plaintiff and the defendant? A. Not the slightest.

Q239. Is the pen manufactured under the new management following July 1, 1905, the same pen as was manufactured in 1898 and the earlier stages of this enterprise?

3856

Objected to as immaterial and without proper foundation.

A. The end joint pens are practically the same except the shape of the holder has been changed somewhat. In 1898 we made what we called a straight holder. After that they changed it to an over-cap style.

Q240. Are the present pens manufactured under different patents from what they were in those times? A. Yes.

Q241. When did you begin making this sack, the self-filler? A. I think our present form of sack pen, we began making them in 1903 to the best of my recollection.

3857 Q242. Do you know who manufactured the pen sold by A. A. Waterman & Co. back in 1898 at the time of the decree of September 3, 1898? A. No, sir, I do not.

Q243. They were not manufactured by Frazer & Geyer Company? A. Not at that time, no.

Q244. Is it a fact that from 1901 up to July 1, 1906, Mr. A. A. Waterman was continuously without interruption a member of some firm of A. A. Waterman & Co. with which you were connected?

Objected to as immaterial.

A. Yes.

It is admitted that Lewis E. Waterman, Sr., died in

3858 1901.

It is admitted that Lewis E. Waterman, Jr., is now Vice-President of the L. E. Waterman Company.

It is admitted that Gibson died August 14, 1899.

Direct-examination closed.

Mr. Watson: The witness is called on to produce all communications, letters and telegrams of any kind, that he has sent to or received from Sol Teller of Cleveland, Ohio; Standard Drug Company, Cleveland, Ohio; T. H. Bushnell, of Cleveland, Ohio; Chamberlain, the attorney

for Sol Teller, Cleveland, Ohio, or any firm of which Chamberlain is a member.

*CROSS-EXAMINATION by Mr. Watson:*

XQ245. What was your business prior to your association with Mr. Frazer in the fountain pen business? A. Just previous to that I was with Yates & Porterfield.

XQ246. Where was their place of business? A. I think at that time they were at 19 William Street, New York.

XQ247. What was their business? A. They were ship owners and merchants in the African business.

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XQ248. What were your duties there? A. My duties were general. We had rather a small force down there and I had to take part in everything that was going on.

XQ249. How did you happen to become associated with Mr. Frazer in the fountain pen business? A. I came to Brooklyn from Boston in 1885 and Mr. Porterfield of the firm of Yates & Porterfield, with whom I went afterwards—he was a large real estate owner in Brooklyn and he had a vacant store at the corner of Tompkins Avenue and urged me to come on and start a drygoods business there. My brother was a partner of Mr. Porterfield in the firm of Yates & Porterfield; and Mr. Frazer had a shoe store next door to the store that I opened. He was also a tenant of Mr. Porterfield. We were along side of each other for three years or more and in that way got acquainted.

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Mr. Frazer afterwards gave up the shoe business, or he took up the fountain pen business along with his shoe business, he having moved to Barclay Street, I think it was, in New York, and he was making the Lincoln fountain pen. I had used fountain pens for a good many years but never found one that was satisfactory; they all being leaky; always leaking at the joints, so that they would always soil my clothes and so I tried one of his pens and it was so satisfactory that I used a good many of them. Along in 1897 I used to see him quite frequently. I jokingly said to him, "Don't you want a partner?" His reply was, "Yes." I think it was only a few weeks later that we formed the partnership of William G. Frazer & Co.

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XQ250. Where was Mr. Frazer carrying on the business of fountain pens when you went with him? A. His office was at 108 Fulton Street, New York, and the factory was in Hinsdale Street, East New York.

XQ251. Where were you—at the office or factory? A. Both. I was living out at Ozone Park at that time and I would stop at the factory in the morning anywhere from one to two or three hours and go back there in the afternoon, and I was in the office part of the time and I was also with Yates & Porterfield. I used to go down to Yates & Porterfield at 10 or half past 10 and leave there early.

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XQ252. Your business with Mr. Frazer was mainly keeping the books was it not? A. No, I had charge of the factory as long as it was in East New York and kept the books too.

XQ253. How long was the factory at East New York? A. I think it was about a year and a half after I went with him.

XQ254. Where was it moved then? A. 36 Gold Street.

XQ255. That was about 1899? A. I think so.

XQ256. Was it before you incorporated the Frazer & Geyer Company? A. It was after. I don't know; it was either the May before or the May after; I don't know.

XQ257. What interest did you have in the partnership with Mr. Frazer? A. We were equal partners.

XQ258. And what was the name of that partnership? A. William G. Frazer & Co.

3864

XQ259. Did you ever have a partnership by the name of Frazer & Geyer? A. No, that was a corporation.

XQ260. You never had any partnership by the name of Frazer & Geyer? A. No. The corporation of Frazer & Geyer Company, the control of its affairs was in the common stock. Mr. Frazer and myself had that common stock, divided equally between us except that a friend of his took a share and my brother took five shares so that we could qualify for directors; so that Mr. Frazer and myself had full control of the affairs of Frazer & Geyer Company.

XQ261. The preferred stock had no voting power? A. No, it had not.

XQ262. Did you pay anything for that common stock in the Frazer & Geyer Company? A. We turned over our assets in William G. Frazer & Co. for it. The actual assets amounted to the amount of our common stock. There was no watering of stock at all of any kind.

XQ263. Who put in the $14,000 represented by the preferred stock? A. That was not all issued at the time. Whatever preferred stock was issued was paid for 100 cents on the dollar, $100 a share in cash.

XQ264. You testified that you first knew A. A. Waterman in 1900; is that right? A. I think I testified that my recollection was the first I had met him was late in 1900 but I was not 3866
sure that I had not met him in 1899 when we first began doing business with him.

XQ265. Where did you meet him? A. I must have been at the office in New York—at our office in New York.

XQ266. Were you ever in his place of business in Boston? A. No, not to my recollection.

XQ267. At no time? A. I don't remember ever having been there.

XQ268. When you first met him he was doing business in his own name, was he not? A. When I first knew of him, he was; he did business in his own name for four or six months, something like that, as far as I knew.

XQ269. The only thing that you know about that is hear- 3867
say? A. I know that we had orders from him right along as A. A. Waterman; from August to November, 1899, we had orders from him in his own name. After that the orders came signed A. A. Waterman & Co. and the bills were charged to A. A. Waterman & Co.

XQ270. All those accounts of goods sent to Boston were paid for by the Colonial Pen Company, were they not? A. No, they were paid for by drafts of A. A. Waterman & Co. on the Colonial Pen Company, which came to us accepted by the Colonial Pen Company.

XQ271. Did you know any of the people at that time in the Colonial Pen Company? A. I did not.

3868 *Hobart W. Geyer*

XQ272. Did you know at that time that A. A. Waterman was connected with the Colonial Pen Company? A. I may have known it but if I did I don't remember the circumstances.

XQ273. You know nothing about A. A. Waterman's business prior to the time you first began to sell him goods? A. No.

XQ274. You never knew Gibson? A. No, sir.

XQ275. Never met him? A. I have no recollection of ever having met him.

XQ276. You would remember it wouldn't you if you met him? A. I don't know. There are so many people I meet it is impossible to remember them all.

3869 XQ277. You never were in the factory we have referred to, in Somerville, Mass.? A. No.

XQ278. You don't know anything about it? A. Not personally. One of your last witnesses, Mr. Lancaster, said that they had the factory and the name was in a large sign painted on it "A. A. Waterman & Co."

Mr. Watson: I move to strike out the answer as irresponsive and incompetent and the witness is cautioned to answer questions and not indulge in irrelevant speeches.

XQ279. Mr. Frazer was the man that made the arrangements with Mr. Arthur A. Waterman at the time you went in partnership with him in 1901, was he not? A. He was the one that

3870 attended to the details, yes.

XQ280. You had practically no talks with Mr. Waterman at all at the time you went into partnership with him? A. Very few.

XQ281. And the partnership arrangement was all arranged by Mr. Frazer? A. I went over the details with Mr. Frazer although it was a straight partnership so that it did not require much of any details.

XQ282. You had no conferences with Mr. A. A. Waterman respecting the terms of that partnership? A. I don't remember now.

XQ283. It was all done by Mr. Frazer was it not? A. I believe the bulk of them. I don't know just the details of it.

XQ284. The desirability of the partnership with A. A. Waterman was discussed between you and Mr. Frazer, was it not? A. I presume so.

XQ285. You don't remember anything about it? A. Nothing special. If it had not been desirable we probably would not have made it.

XQ286. Mr. Waterman had no money to put into that partnership, did he? A. That I don't know. He did not put any in.

XQ287. What money did you put into the partnership of A. A. Waterman & Co. in 1901? A. I believe it was $500. 3872

XQ288. Where did you get that $500?

Mr. Bacon: Objected to as immaterial.

A. I presume I took it out of my bank account. I don't know any other place to get it.

XQ289. Didn't you take it out of the Frazer & Geyer Company? A. Not to my recollection. I don't know why I should. If I did it must have belonged to me.

XQ290. Didn't you take it out of the Frazer & Geyer Company? A. I don't remember.

XQ291. Did not Mr. Frazer do the same thing? A. I don't know. I know at that time $500 didn't look very large to me anyway. 3873

XQ292. Prior to forming this partnership with Mr. Waterman in 1901 did you discuss Judge Kellogg's decree of September 3, 1898, with Mr. Frazer? A. I don't think I knew anything about it at that time.

XQ293. You did not discuss it with Mr. A. A. Waterman either did you? A. I don't think I knew anything about it. My recollection is that Mr. Frazer informed me about it after the partnership was formed.

XQ294. Did Mr. Isaac E. Chapman have anything to do with bringing about this partnership between you, Mr. Frazer and A. A. Waterman? A. I don't think he knew it was formed

until after it had been done. I don't think he knew anything about it.

XQ295. Had you arranged with Mr. Isaac E. Chapman to supply the funds for this partnership that you agreed to supply? A. Mr. Frazer said that he had a party from whom he could get the funds and he afterwards told me it was Mr. Chapman.

XQ296. You did not have anything to do with arranging the funds with Mr. Chapman at all? A. No, I did not.

XQ297. What relation is Mr. Frazer to Mr. Chapman? A. So far as I know he is not any relation.

XQ298. No relation between their wives or families? A. I don't think there is the slightest; as far as I know there is not. I
3875 never heard it mentioned.

XQ299. As far as you know, no arrangements were made with Mr. Chapman to furnish the money for the partnership between you and Frazer and Waterman prior to the formation of that partnership? A. No, when we formed that partnership and agreed to give credit for $25,000. I knew that if Mr. Frazer could not get it I could; so that it never gave me any trouble.

XQ300. But you had no arrangement with anybody at that time to furnish the money? A. I had not.

XQ301. And you don't know that Mr. Frazer did? A. I don't know.

XQ302. Was the use of the name A. A. Waterman & Co. discussed at all at the time you formed this partnership in 1901?
3876 A. I presume it was as Mr. Waterman had been doing business or the firm of A. A. Waterman & Co. in Boston had been doing business; it was simply a case of transferring it to New York. Our object was, that we had been supplying the firm of A. A. Waterman & Co. with what we presumed was a small part of their goods and we had a plant where we could turn out a whole lot more goods than we were making and we thought with the new arrangement, or we knew with the new arrangement we could supply them with all the goods and that by our method of doing business, which had shown that our business was increasing rapidly all the time, that we could also increase the business of A. A. Waterman & Co.

XQ303. Did you not know that the Colonial Pen Company owned the factory in Somerville that you refer to? A. I did not know anything about the Colonial Pen Company.

XQ304. Did you know that A. A. Waterman and the Colonial Pen Company at that time had a disagreement and were not going to do any further business? A. I know the Colonial Pen Company had been selling agents for A. A. Waterman & Co., and that for some reason or other Mr. Waterman was going to break with them or had broken with them, I don't know just which now, and then he formed the copartnership with us.

XQ305. After he came down to New York, in the partnership, you never furnished any further supplies to the Colonial Pen Company, did you? A. I think not. 3878

XQ306. And you knew that that was going to happen when he came here anyhow didn't you? A. My recollection is that it had already happened.

XQ307. Did you know Rhodes Lockwood? A. No.

XQ308. You never had any business with Rhodes Lockwood at any time? A. Not to my recollection.

XQ309. Did you have any business with the Davidson Rubber Company of Boston at any time? A. Yes, I think we bought some rubber from them.

XQ310. You never made any fountain pens for Rhodes Lockwood? A. No.

XQ311. Or the Davidson Rubber Company? A. Not that I remember. 3879

XQ312. Did you ever supply any parts of fountain pens to the Sterling Fountain Pen Company of Boston? A. No.

XQ313. Never had any business with them? A. I think not.

XQ314. Did you take over any of the debts of A. A. Waterman & Co. when he came down here to become a partner? A. Not as a firm but my recollection is that we paid some of the debts of A. A. Waterman & Co. which Mr. Waterman had assumed. The one I remember particularly is paying P. D. Collins several hundred dollars and this we charged to Mr. Waterman's account.

XQ315. Was not that an individual account of A. A. Waterman? A. We charged it to Mr. Waterman's individual account.

XQ316. Was it not an individual debt of A. A. Waterman? A. I understood it was a firm debt that he had assumed.

XQ317. When was that debt incurred? A. While they were at West Somerville.

XQ318. While he was doing business as A. A. Waterman? A. As A. A. Waterman & Co., I understood.

XQ319. You don't know anything about it personally? A. No, that was the way the information was given to me. That is all I know about it.

3881 XQ320. You paid it as a personal debt or obligation of A. A. Waterman? A. That is as I understand it; an obligation that he had assumed of the firm of A. A. Waterman & Co.

XQ321. Who told you it was a debt of A. A. Waterman & Co.? A. Either Mr. Waterman or Mr. Frazer; I am not sure which.

XQ322. You are not prepared to swear that that was not a personal debt of A. A. Waterman? A. I can only swear what I was told.

XQ323. You don't know anything about it personally at all? A. No, I do not. I know just what I was told.

XQ324. You charged it to A. A. Waterman personally? A. I charged it to his personal account.

3882 XQ325. And that was the only debt of his that you paid was it not? A. That is the only one I remember. There may have been others but I don't remember.

XQ326. Don't your books show? A. That I don't know. I presume they would.

XQ327. If you have any other debts of A. A. Waterman that you paid, or A. A. Waterman & Co., that was doing business as you say, in Boston, will you please look it up and advise us while you are giving testimony? A. Yes.

XQ328. Do you know who the partners were of that A. A. Waterman & Co. that you have been talking about, doing business in Boston? A. I do not. I don't know whether I ever knew or not.

XQ329. You did not know they had any partners? A. My impression is that somebody said his wife was his partner but it is only a hazy impression.

XQ330. Did A. A. Waterman ever tell you that? A. I don't remember. The impression is very hazy.

XQ331. All you know about it is hearsay anyhow? A. I know we sold the firm of A. A. Waterman & Co. for over a year and that A. A. Waterman & Co. paid the bills, partly in cash and partly in drafts on the Colonial Pen Co.

XQ332. What do you know about Waterman & Gibson—anything? A. Nothing; I don't remember anything.

XQ333. When A. A. Waterman came down here to New York did he bring anything from the concern of Waterman & Gibson? 3884
A. Yes, I know he brought several books and he brought some patterns and some tools and things of that sort. We had a big bunch of stuff around there for years that he brought on.

XQ334. Do you know where he got it? A. I don't know where he got it. He claimed that it was what he had left from the old firm of A. A. Waterman & Co.

XQ335. Don't you know that Rhodes Lockwood took over everything that he had in the shape of tools, merchandise, patterns and everything else and all the assets of Waterman & Gibson? A. If he took them over he must have handed them back to him because Mr. Waterman brought them on with him.

XQ336. You know that he took them all over, don't you? A. I don't know anything about it. 3885

XQ337. You don't know whether these things came from the Colonial Pen Company or from Waterman & Gibson that were brought on? A. I don't know anything about it. All I know is that Mr. Waterman brought them saying that they were what he had in the old firm of A. A. Waterman & Co.; that was what he had left. And he turned them in as per the copartnership articles.

XQ338. What did they consist of? A. Tools and patterns and books and things of that kind.

XQ339. Did you ever use any of them? A. I don't remember whether they were used or not. I never used any personally to my recollection. They were used in the factory, yes.

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XQ340. Did not A. A. Waterman take them away with him after that? A. No.

XQ341. Are they still there? A. I think when we changed our factory around most of them were thrown out.

XQ342. And you never used them at all in the business? A. Some of them were used but I don't remember just which ones. I know I did not use them myself.

XQ343. You never had much to do with the manufacturing part of the Frazer & Geyer business, did you? A. I did for the first few months; after that I did not, giving my time more to other business.

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XQ344. What were you doing after that? A. I was engaged with Yates & Porterfield.

XQ345. That was after you had formed the partnership of A. A. Waterman & Co. and the Frazer & Geyer Company? A. I went with Yates & Porterfield in 1888, and did not leave them until 1905, when the reorganization of the Frazer & Geyer Company and A. A. Waterman & Co. took effect.

Recess.

XQ346. As we suspended for lunch you stated that from 1888 to 1905, you were with Yates & Porterfield? A. The last few years of that connection it was a corporation, the Yates & Porterfield Trading Company.

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XQ347. And during that time your connection with the fountain pen business was merely nominal? A. It was far from nominal. I probably put in four or five hours a day in the fountain pen place during all that period.

XQ348. And all you know about the few tools and old books that you got from A. A. Waterman at the time the partnership was formed in 1901, was what A. A. Waterman told you—where they came from? A. As far as I remember.

XQ349. You had no other information about that? A. No, no other information.

XQ350. Did he not tell you those books were his personal books? A. No, sir, because the books were marked A. A. Waterman & Co.

XQ351. Don't you know that the money you paid for A. A. Waterman was for borrowed money, that A. A. Waterman borrowed personally? A. I never was so informed. I never heard of any such thing before.

XQ352. When you formed the partnership in 1901, was not the desirability of using the name Waterman, a well-known name in the fountain pen business, discussed? A. I presume it was.

XQ353. You discussed it? A. I presume so.

XQ354. With whom? A. It must have been with Mr. Frazer.

XQ355. What was said about it? A. I do not remember any conversation at all.

XQ356. That is the reason you took the name, was it not? A. The reason we took the name was that the firm of A. A. Waterman & Co. had been doing business; they had more or less of an established business and we had been making a part of the goods for them and we thought—we not only thought but we knew that if we formed a partnership with Mr. Waterman we would then have all of the business and then we could increase that business by our own methods. 3890

XQ357. Don't you know that the concern of Waterman & Gibson became insolvent and had no good will or business at all? A. I do not.

XQ358. Don't you know that Rhodes Lockwood took over everything they had to satisfy his claim against him? A. I do not.

XQ359. Don't you know that about the time that A. A. Waterman became separated from the Colonial Pen Company that that concern was practically insolvent? A. I don't know but I heard a year or so later it was sold out. 3891

XQ360. Don't you know that within a few months afterwards it was sold in bankruptcy? A. No, sir, I do not know it.

XQ361. A very few months afterwards? A. I do not know it. I know Mr. Lancaster told me that he bought all the assets.

XQ362. Don't you know that that was another concern that Lancaster bought? A. I do not.

XQ363. The Colonial Pen Company went into insolvency right after Waterman left it? A. I never heard of such a thing.

3892

XQ364. And it was insolvent at the time he left it and that is the reason he left it? A. I never heard it.

XQ365. Do you remember discussing with Frazer about having Chaplin come over to New York with Waterman because the business was going to stop over there? A. I don't remember it. When I was in Boston Mr. Chaplin said that he had met me before but I have not the slightest recollection of having met him. I do not say that I had not met him but I have no recollection whatever of ever having met Mr. Chaplin until I met him in Boston the 31st day of March this year.

XQ366. When was it that you moved the factory to 22 Thames Street? A. I think it was about nine year ago. I am

3893 not positive on that.

XQ367. It has been there ever since? A. It has.

XQ366. What is the size of the factory you have at Thames Street? A. At present I think we have between four thousand and five thousand square feet of space.

XQ369. You pay about $125 a month rent?

Objected to as immaterial.

A. I think our rent and power together amounts to about $200.

XQ370. And the rent is about $125 a month? A. I think that is right.

XQ371. And that includes your factory and office and all

3894 the outfit you have in New York? A. Yes, at present. When we first went there we paid $275 a month for the whole floor.

XQ372. How long have you had your present quarters? A. Two years. We have leased more space now from the first of May.

XQ373. How much more space? A. I think about fifteen hundred or eighteen hundred feet.

XQ374. How much more rent do you pay?

Mr. Bacon: That is objected to and I direct the witness not to answer.

XQ375. Have you doubled your space?

Mr. Bacon: I direct the witness not to answer.

Mr. Watson: The Court's attention is called to the interference of defendant's counsel with this examination, on points directly covered in the direct-examination.

XQ376. Do you refuse to answer?

Mr. Bacon: No question was asked on direct-examination about the amount of space occupied.

Mr. Watson: Counsel calls the Court's attention to the testimony going over this matter at length by defendant's counsel; stating about the machines and processes and all about the methods used in factories and how extensive it was and all that kind of business. Plaintiff's counsel wants to show that this is an insignificant factory in the upper story of a factory building used as a factory and office. 3896

XQ377. How much space do you have under your new arrangement?

Mr. Bacon: The same objection and same direction.

XQ378. Do you refuse to answer? A. Yes, under the direction of counsel.

XQ379. Will an answer to the question tend to incriminate you or degrade you or subject you to any forfeiture? A. It will not. 3897

XQ380. (Question is repeated.)

Mr. Bacon: The same direction.

Mr. Watson: I will certify the question.

XQ381. How many employees have you in your New York factory? A. Between forty and fifty.

XQ382. Were there as many as forty or fifty employed during the last year all the time? A. It has varied. It has been up and down.

XQ383. Have you had as many as forty every day during the business year? A. For the last year?

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XQ384. Yes? A. I would not say that. We have had very close on to it but as I say there are changes every now and then. Sometimes there are more and sometimes there are less.

XQ385. That includes your office force in the factory? A. You asked for factory. That includes the factory force.

XQ386. That does not include you office force? A. It does not.

XQ387. Was any credit ever furnished by Isaac E. Chapman outside of the cash he put into the business? A. Furnished whom?

XQ388. To the Frazer & Geyer Company or to A. A. Waterman & Co. or the Modern Pen Company? A. Not to my

3899 knowledge.

XQ389. Why could you not have answered that in the first place then? A. It was a general question. I wanted to know what I was answering. I am trying to give you correct answers but I want to know that I am answering the questions that you are trying to find out about.

Mr. Bacon: I ask plaintiff's attorney to explain what he means by giving credit outside of cash?

Mr. Watson: That is the exact question you asked?

Mr. Bacon: Since when?

Mr. Watson: It is in the testimony.

Mr. Bacon: Oh, no.

3900 The Witness: I have not heard any such question before.

XQ390. When was the receiver appointed for William G. Frazer?

Mr. Bacon: Objected to; the exhibit in evidence shows for itself.

A. If you will give me the exhibit I can tell.

Mr. Raymond: June 7th, 1905.

The Witness: June 7, 1905, Exhibit A-2.

XQ391. This notice Exhibit A-2 was served on you on June 8th, 1905? A. Yes.

XQ392. Did the firm of A. A. Waterman & Co., composed of yourself, Frazer and A. A. Waterman, go into the hands of a receiver? A. We did not.

XQ393. No receiver was ever appointed for them? A. I don't remember that there was.

XQ394. You don't remember anything about any receivership proceedings at all for A. A. Waterman & Co. composed of yourself, William G. Frazer and A. A. Waterman? A. My recollection is that my attorney explained to me that this other execution, or whatever you call it, dissolved the firm. I did not go into it any further than that.

XQ395. You never made any affidavit in that proceeding did you? A. Not that I remember. 3902

XQ396. You don't remember that any receiver was ever appointed for the firm of A. A. Waterman & Co., composed of yourself, Frazer and Arthur A. Waterman? A. I don't remember it now, no, sir. There were so many actions at that time I could not remember them all.

XQ397. Did you ever turn over any assets to Gratz Nathan, receiver for William G. Frazer? A. I did not have anything belonging to William G. Frazer to turn over, so I could not.

XQ398. You did not have an interest in the firm of A. A. Waterman & Co.; composed of yourself, Frazer and Arthur A. Waterman? A. That firm was in debt so it owed more than its assets; the liabilities were larger than its assets.

XQ399. Did they have any good will? A. They certainly did. 3903

XQ400. What did you do with that? A. That went with the new firm, I presume.

XQ401. How did it go to the new firm? A. My recollection is that the sheriff sold out everything connected with the Frazer & Geyer Company and A. A. Waterman & Company. I am not positive that that was so, and it was bought in by the Chapman interests and turned over to the Modern Pen Company when that was formed.

XQ402. What was sold by the sheriff? A. I have not a copy of what was sold. I think it was all the right, title and interest and everything connected with the business.

XQ403. Was there any sale by the sheriff of the assets of A. A. Waterman & Co.? A. I don't remember. I was not at that sale and I don't remember what was sold.

XQ404. You don't remember anything about the proceeding at all, do you? A. I know that there was a proceeding but just what the details were I don't remember.

XQ405. You remember that proceeding now? A. Yes.

XQ406. Did you keep the books of A. A. Waterman & Co. at that time? A. I did up to—I think the latter part of May. No, I did not keep the books, I kept part of them. I entered the cash in the cash book; that is all.

3905 XQ407. Were not the books kept under your direction? A. Part of them were.

XQ408. Who else kept books besides you? A. I think at that time a man named Marsh was the head bookkeeper. We had several bookkeepers and I think a man named Marsh was the head bookkeeper.

XQ409. Do you remember bringing an action against Arthur A. Waterman—you and Frazer individually against Arthur A. Waterman asking for the appointment of a receiver? A. I started an action of some sort. I have forgotten now just what it was.

XQ410. You asked for an injunction in that action to enjoin A. A. Waterman from interferring with the assets of A. A. Waterman & Co.? A. I don't remember. There was quite a

3906 volume of papers and I have forgotten now.

XQ411. Did you swear at that time that A. A. Waterman was a man of no financial responsibility? A. I may have. As I have just told you, the firm of A. A. Waterman & Co. was in debt much more than it had any assets to cover but that was all I knew Mr. Waterman had, his interest in the firm. I may have sworn to that.

XQ412. He never had any money in the firm at any time, did he? A. I don't think that he did. I don't think that he had anything to his credit.

XQ413. He never put any money into the firm? A. No.

XQ414. At any time? A. It would only be that he left some of his profits in there but I don't think that he did that.

XQ415. Do you know whether Arthur A. Waterman at that time was working with the Chapmans to oust you and Frazer from the business? A. I did not know it at that time. I judged so afterwards.

XQ416. You did not make an affidavit to that effect in that action? A. I think not.

XQ417. You would remember it would you not if you made any such affidavit? A. I just told you I could not remember what was in that, it is so long ago and there were so many different things happening that I could not keep track of the details. I have not seen the papers since that time or given them a thought.

3908

XQ418. Do you recall that the Chapmans at that time were trying to oust you and Frazer from this business? A. The Chapmans—

XQ419. Answer the question yes or no, whether you remember? A. The Chapmans had tried to get Mr. Frazer to accept a lower salary than he had been having, as I testified, and Mr. Frazer would not agree to it and it caused friction between them and as the outcome from it I judge that the Chapmans had decided to oust Mr. Frazer.

XQ420. They were trying to oust Mr. Frazer in 1905? A. Otherwise they would not have called the loan that they had on his stock.

XQ421. Did you make an affidavit at that time that Waterman was working with Chapman to oust Frazer and get control of the business? A. Possibly I did, I don't remember.

3909

XQ422. Don't you remember that you joined Frazer in that action? A. I remember that I did join Mr. Frazer, because he had misled me in regard to his dealings with the Chapmans and I stayed with him until he told me that he was going to wreck the concern so that they would not have a dollar left, so that the Chapmans would lose all that they had in it. I told him he ought to do what he could to protect his friends and I did not intend to do anything to make my friends lose all the money they had put in the business through their friendship for me and I said, "If that is your attitude I shall not work with you

any longer" and I left him and went down and told Chapman that if there was anything I could do to help protect the interest of all the stockholders in the Frazer & Geyer Company I would do whatever I could.

Mr. Watson: Counsel calls the attention of the Court to the impossibility of getting responsive answers from this witness and the question is repeated.

XQ423. (Question repeated.) A. I joined him in some action. I have forgotten now just what it was.

XQ424. Didn't you ask that a receiver be appointed for A. A. Waterman & Co.? A. I don't remember.

3911 XQ425. Didn't you make an affidavit to the effect that the Chapmans were trying by fair means or unfair means to get control of the firm of A. A. Waterman & Co. of which you were a member? A. I have told you I don't remember what was in the affidavit. I have not seen it or given it a thought since. It was made six years ago and I don't know what was in it.

XQ426. After you made that affidavit didn't you switch to the other side and make an affidavit for the Chapmans? A. I don't remember having done anything of the sort.

XQ427. I show you a certified copy of an affidavit verified the 14th day of June, 1905, and ask you if you made that affidavit (handing witness the paper)? A. I must have signed it.

3912 The paper identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 127.

XQ428. This is a copy of the complaint in that action is it not, that I now show you (showing witness the paper)?

Objected to as immaterial.

A. I think so.

The complaint is offered in evidence and marked Exhibit 128.

Objected to as immaterial.

XQ429. And here is another affidavit that you made in that same action, that I now hand you (handing witness the paper)? A. I signed that affidavit.

XQ430. That is directly opposite from the one that you made, Plaintiff's Exhibit 127, is it not? A. Yes, it states that I had got further information.

XQ431. What did you get for switching from one side to the other in that litigation? A. I didn't get anything.

XQ432. What were you promised? A. Nothing.

XQ433. Did not Isaac E. Chapman protect your stock in the Frazer & Geyer Company because you did switch? A. No more so than anybody's else stock.

XQ434. Did he protect Mr. Frazer's stock? A. That I don't know anything about except that I understood that Mr. Frazer's stock was sold out because he did not pay his loan on it.

3914

XQ435. Didn't you take a loan on your stock? A. I did not.

XQ436. At any time? A. Not from Mr. Chapman. I never borrowed a dollar from Mr. Chapman or any one connected with him.

XQ437. Do you consider Mr. Chapman a man of veracity, who would tell the truth? A. As far as I know, he is.

XQ438. Is this statement true: "Mr. Frazer was given the management of the Frazer & Geyer Company and of A. A. Waterman & Co."? A. That is true.

XQ439. "At first this management was given to Mr. Frazer and Mr. Geyer jointly but Mr. Geyer is a bookkeeper and wholly incompetent." Is that true? A. No, it is not. Mr. Chapman was very much prejudiced against me by Mr. Frazer, as I have since found out.

3915

XQ440. Mr. Chapman had known you in connection with this business for a number of years prior to 1905 hadn't he? A. I met Mr. Chapman very little except at the directors' meetings.

XQ441. Mr. Chapman makes affidavit that the firm of A. A. Waterman & Company, consisting of yourself, Mr. Frazer and Mr. Waterman was organized without capital except $1,000, which they loaned from the Frazer & Geyer Company. Is that so?

Mr. Bacon: I object to reading from any affidavit that is not in evidence.

A. I don't remember that.

XQ442. Did you and Mr. Frazer take out of the funds of the Frazer & Geyer Company without consent and in violation of the duties of the officers and trustees of that company the sum of $1,000? A. Not to my recollection. I never took anything that did not belong to me.

XQ443. And did you put that money into the A. A. Waterman Company, that $1,000, that you and Frazer put in at the time it was organized? A. I put $500 into the firm of A. A. Waterman & Co.

XQ444. Did you get that from Frazer & Geyer? A. I don't remember where I got it. At that time I could just as well have
3917 paid $5,000 or $10,000. I had it.

XQ445. Do you know whether Mr. Frazer got his money, $500 from the treasury of the Frazer & Geyer Company? A. I don't know.

XQ446. Did Mr. Chapman, as soon as he found out that you had taken this money from the Frazer & Geyer Company compel you to pay it back to them? A. It is possible that it is a matter of bookkeeping so that it showed on the Frazer & Geyer books but if it was and Mr. Chapman called for it, why, we immediately replaced it. I don't remember those details. It was a long time ago.

XQ447. Did Chapman loan you the money that you put back? A. Mr. Chapman never loaned me a penny, Mr. Chapman or
3918 any of his friends. As I told you before, Mr. Chapman was very much prejudiced against me by Mr. Frazer and it is only within the last two or three years that that prejudice has been overcome.

XQ448. Was it a fact that Frazer & Geyer Company lost money from the beginning but that it was concealed on the books of the company? A. From the beginning of what?

XQ449. From its incorporation? A. No. It made money for several years.

XQ450. Did you declare a stock dividend which was not properly declared? A. No, sir.

XQ451. Did the Chapmans force you and Frazer to turn back into the company a stock dividend which they claimed had been improperly paid over to you? A. No, sir.

XQ452. You never returned any stock to the treasury of the Frazer & Geyer Company? A. No.

XQ453. Was there a large deficit of Frazer & Geyer Company covered up by transferring it to good will on the books of the Frazer & Geyer Company? A. I don't think so. I don't remember any such.

XQ454. Did you keep the books? A. I did not. I kept part of them.

XQ455. Didn't you have charge of the accounts and books of the Frazer & Geyer Company? A. We had a bookkeeper 3920
named Marsh and we had two or three bookkeepers before him. I have forgotten who they were; but Marsh was the bookkeeper. I don't remember the others.

XQ456. What officer of the company were you? A. I was Treasurer.

XQ457. All the time were you not? A. All the time.

XQ458. If there was money taken out of the treasury of the Frazer & Geyer Company you ought to know it? A. We were taking money out and putting it in all the time. There was hundreds of thousands of dollars handled every year. I cannot remember every transaction.

XQ459. Is it true that you were cashier of the Frazer & Geyer Company? A. I don't know what you call cashier. We 3921
did not have any such officer as cashier. I was treasurer.

XQ460. And for your services there you were paid by the hour were you not? A. For a time.

XQ461. In 1905 and for some time previous to that you were paid by the hour, were you not? A. I think so for a few months.

XQ462. Your salary did not exceed fifteen or twenty dollars a week? A. Something like that. I gave only four or five hours a day to it.

XQ463. You did not have anything to do with the management of the Frazer & Geyer Company at that time at all did you? A. No, Mr. Frazer was the manager then.

XQ464. You had nothing to do with the factory at that time did you? A. Nothing. I used to go into the factory right along and see how things were going.

XQ465. How long did that continue? A. I should say perhaps for two or three years. All this time I was treasurer of the Yates & Porterfield Trading Company, which was a good position.

XQ466. As a result of this proceeding, of which I have shown you the complaint, Exhibit No. 128, a receiver was appointed for the A. A. Waterman Company was there not? A. I think not. I think the matter was dropped.

3923 XQ467. I show you a certified copy of an order of the Supreme Court of New York County, State of New York, and ask you if that does not appoint a receiver? A. Yes, I think that the man was appointed receiver but he never qualified. I think I remember the circumstance now. He was appointed receiver but he never qualified.

XQ468. You do not know that Mr. Alexander D. Henderson did qualify as receiver do you, under the order I have just shown you? A. My recollection is Mr. Henderson called on me and showed me that order and he found out the shape things were in and could not see that he could get back his fee for qualifying and he dropped it.

XQ469. You don't know whether he qualified or not do you? A. I never heard of his qualifying.

3924 XQ470. You would be surprised to know that he did qualify and filed a bond, which was approved by the Court, would you? A. I am not surprised at anything.

XQ471. Did you turn over any property to Alexander D. Henderson? A. I did not have any to turn over.

XQ472. Will you please answer the question? A. No, I did not.

A certified copy of order is offered in evidence and marked Plaintiff's Exhibit No. 130.

Mr. Bacon: Objected to as immaterial.

XQ473. Has that order ever been modified or set aside in any way? A. I never heard anything about the order from

that time until this. This is the first time that I have seen anything ever since Mr. Henderson called on me.

Mr. Bacon: Was there any bond that went with that order?

Mr. Watson: You will find one there.

Mr. Bacon: Do you produce any bond?

Mr. Watson: I have a copy of it.

XQ474. On the 14th day of June, 1905, at the time you verified the complaint, Plaintiff's Exhibit 128, were the facts stated in that complaint true that you stated on your personal knowledge? A. Those that I stated on my personal knowledge are true, yes. 3926

XQ475. Were the facts which you stated in the affidavit Plaintiff's Exhibit 127, true? A. The facts that I stated on my positive knowledge are true.

XQ476. Has there ever to your knowledge been any sale by the sheriff or anybody else of the assets of the A. A. Waterman & Company composed of yourself, Mr. Frazer and Mr. Waterman? A. I don't know whether those were sold at the time the Frazer & Geyer assets were or not. If not, I have not any knowledge of it at all.

XQ477. Did you ever turn over any proceeds of such sales to Gratz Nathan, the receiver for Mr. Frazer? A. I did not.

XQ478. After this order, Plaintiff's Exhibit 130, was entered you did not undertake to act in any capacity for the firm 3927 of A. A. Waterman & Co. composed of yourself, Mr. Frazer and Mr. Waterman? A. I did not.

XQ479. Nothing was done by you in relation to the affairs of the firm after that order was entered? A. I think not. I don't remember anything.

XQ480. Did you ever at any time make any transfer or assignment of the assets or property or good will of that partnership composed of yourself, Mr. Frazer and Mr. Waterman? A. I don't remember having done anything of the sort.

XQ481. Can't you answer that question yes or no? A. I cannot answer it. I don't remember.

Mr. Bacon: He did, I have the documents.

Mr. Watson: I want it to appear on the record that counsel for defendant has told the witness that he did and that he has the documents.

Mr. Bacon: I did not tell the witness; I told you.

Mr. Watson: And the statement is made before the witness. Counsel for defendant is asked to produce the document which shows any such assignment.

Mr. Bacon: I will produce it in due time on the redirect examination.

XQ482. You knew about Defendant's Exhibit A-12 at the
3929 time it was made, didn't you? A. I did not. I don't remember ever having seen it. I don't think I ever did see it.

XQ483. About the time of this suit, in June, 1905, another action was begun against the Frazer & Geyer Company by the Chapman interests, was there not? A. Yes, the estate of Chapman, and Isaac E. Chapman started a suit to foreclose their mortgage, is my recollection.

XQ484. Those were in May and June, 1905, were they not? A. I think they were in June.

XQ485. 1905? A. Yes, 1905.

XQ486. They were on notes, were they not? A. They were notes along with a chattel mortgage; notes secured by a chattel mortgage.

3930 XQ487. Did you defend those actions? A. I think not.

XQ488. Did the Frazer & Geyer Company defend those actions? A. I don't remember.

XQ489. The Frazer & Geyer Company at that time was controlled by the Chapmans, was it not? A. They had a large majority of the stock, the Chapmans and their friends. I think the control was in the common stock.

XQ490. And Isaac E. Chapman was the president of the Frazer & Geyer Company at the time this action was begun was he not? A. Yes.

XQ491. What office did William L. Chapman have in the corporation at that time? A. I think he was vice-president.

XQ492. They and their friends controlled the Frazer & Geyer Company at the time those suits were brought did they? A. No, the control was in the common stock and the common stock was in trust so that it was practically controlled by Mr. Frazer.

XQ493. Who were the officers of the Frazer & Geyer Company in May and June, 1905? A. Isaac E. Chapman was president, William L. Chapman, vice-president; Mr. Frazer was secretary and I was treasurer.

XQ494. Who was the other director? A. I think Mr. Waterman was one of the directors.

I am not positive but I think a friend of mine, Captain Henry J. Rogers; he was a director at some time but whether he was at 3932
that time I am not sure.

XQ495. How many directors were there? A. My recollection is that there were six.

XQ496. Mr. Waterman at that time was working in the interest of the Chapmans in May and June, 1905? A. I think he was working in the interest of the Frazer & Geyer Company and A. A. Waterman & Co.

XQ497. There was an action brought by the Frazer & Geyer Company against you and Mr. Frazer and Mr. Waterman at about the same time was there not? A. I think so.

XQ498. Was a judgment recovered against you in the action? A. I think not. I don't think it was ever carried out or pushed to a final settlement.

XQ499. I show you a copy of an order and ask you if you 3933
ever saw that before (handing witness the paper)? A. I never knew that there was any judgment; I never heard of any judgment being gotten against me.

XQ500. That does not refresh your recollection? A. No, I never had the slightest idea that a judgment was taken against me.

A copy of the judgment shown the witness is offered in evidence and marked Plaintiff's Exhibit No. 131.

Mr. Watson: It purports to be a judgment of Frazer & Geyer Company against William G. Frazer, Hobart W. Geyer and Arthur A. Waterman in the sum of $12,-

338.50, entered June 4th, 1908, and the action was begun by summons dated May 17th, 1905; complaint verified by Isaac E. Chapman on said date; all the defendants appeared and answered.

XQ501. You never have paid that judgment have you? A. I have not. I never knew anything about it.

XQ502. Nobody has ever asked you to pay that judgment? A. As I say, I never knew that there was any such judgment. This is the first I have ever known it.

XQ503. Did not this matter come up, this suit, when you changed from Frazer's side of that controversy to Chapman's
3935 side of that controversy? A. It did not. I have told you the reason for the change was that Frazer had said he was going to do all that he could to wreck the concern and make the Chapmans lose, and their friends, and they would practically lose everything they had in it and I tried to advise him that his friends had a lot of money in it and mine had a lot and I certainly would not do anything to make my friends lose their investment.

Mr. Watson: I move to strike out the answer as irresponsive and volunteered.

Mr. Bacon: I object to it.

XQ504. The estate of William E. Chapman, Incorporated,
3936 began a suit against you, Frazer and Mr. Waterman and the Frazer & Geyer Company in June, 1905, didn't they? A. I think so. There were so many suits started I don't know just what they were.

XQ505. There was a judgment obtained against you in that suit was there not? A. Not to my knowledge. I never heard of any judgment being obtained against me until you just showed me this.

XQ506. Didn't you make an answer in that suit? A. I don't remember. I may have answered the suit when it was first brought but I never paid any further attention to it.

XQ507. Was that because Chapman assured you that you need not worry as long as you would come over to their side?

A. They never assured me of anything. When I went with them I took a minor position, to do what I could to help to protect my friends' investment.

XQ508. You appeared in that action by Straley & Hasbrouck, didn't you? A. Mr. Frazer and myself engaged Straley & Hasbrouck and then we dropped it. They did not appear except on the start, as my recollection is; but I had nothing more to do with Straley & Hasbrouck after I left Mr. Frazer.

XQ509. You put in an answer in that case didn't you through Straley & Hasbrouck? A. I think so.

XQ510. Verified on the 5th day of June, 1905? A. Yes.

XQ511. Don't you remember that that case was tried some time in June, 1908? A. I do not know anything about it. I never heard anything more about it. I do remember that Mr. Hasbrouck sent down, and it may have been about that time, and said that there was a suit coming up and wanted to know if I wanted him to appear for me and I told him no. I never paid any attention to what the suit was. 3938

XQ512. I show you the judgment entered in that case and ask you if that is not a copy of the judgment against you by the estate of William E. Chapman, Inc.? A. Yes, that is a judgment against me. This shows that I did not appear in that suit. It shows that Waterman & Frazer were represented but I was not.

XQ513. You put in an answer in that suit which I have shown you; is not that a fact? A. Yes. 3939

XQ514. Don't you know that that constitutes an appearance? A. No, I am not a lawyer. I don't know what it amounts to.

A copy of the judgment shown the witness is offered in evidence and marked Plaintiff's Exhibit No. 132.

Objected to as immaterial.

XQ515. Did you ever pay that judgment? A. I did not. I never heard of it before.

XQ516. Do you know whether it is of record now or not? A. I don't know anything about it. The only information I have in regard to it is what you have shown me today.

XQ517. Do you know that the merchandise and stock on hand of the Frazer & Geyer Company was sold by the sheriff? A. That is what I understood. I was not at the sale.

XQ518. Do you know who bought it? A. I understood it was sold to a man named Quackenbush, a representative of the Chapmans.

XQ519. He bought it in his personal name didn't he? A. That was my understanding.

XQ520. How much did he pay for it? A. I don't know.

XQ521. Do you know what was sold? A. I think the advertisement of the sale read "All the right, title and interest" in the assets.

3941 XQ522. Did that include the factory used for the manufacture of fountain pens? A. I don't know what was included in it. At the time I was not with the concern. It was during the short time that Frazer and myself were out of there fighting the Chapmans and I don't know just what was done.

XQ523. The machinery in the factory where you made your fountain pens belonged to the Frazer & Geyer Company did it? A. Yes.

XQ524. And the stock that you had in the factory, the raw material, the partly finished goods and the finished goods that you had in the factory all belonged to the Frazer & Geyer Company didn't they? A. Yes.

XQ525. Were not those the things that were sold? A. I
3942 don't know just what was sold.

XQ526. What did Quackenbush turn over to the Modern Pen Company; do you know? A. No, I don't think I ever saw a copy of that contract or bill of sale.

XQ527. He made a written bill of sale to the Modern Pen Company, didn't he? A. I think so but I am not positive.

XQ528. Is not that among your records in your office? A. I don't remember. I did not have charge of the records at that time and I don't remember.

XQ529. What did A. A. Waterman & Company's assets consist of? A. They consisted mostly of stock and book accounts, I think.

3943

XQ530. Finished goods? A. Finished goods.

XQ531. And book accounts? A. Yes.

XQ532. Don't you remember that you transferred those to the Frazer & Geyer Company in liquidation of the account which A. A. Waterman & Company owed Frazer & Geyer Company? A. I think perhaps it was done. I don't remember exactly. A. A. Waterman & Co. also had whatever tools and things were necessary for assembling pens. They used to buy the holders and pens from the Frazer & Geyer Company and do the assembling themselves.

XQ533. You testified this morning that Frazer & Geyer did the entire manufacturing? A. They did the most of it but I remember now that the A. A. Waterman & Co. also assembled their own goods. Those that we sold outside to other people, to the customers that we did not send over to A. A. Waterman & Co. were made complete by Frazer & Geyer Company.

3944

XQ534. Before you became treasurer of the Modern Pen Company what was your position with that company? A. Assistant treasurer.

XQ535. What was your connection with A. A. Waterman & Co., composed of Isaac E. Chapman and William L. Chapman? A. Until Mr. Martling severed his connection I had charge of the factory. After that I was made general manager of the factory and of the business of A. A. Waterman & Co. and treasurer of the Modern Pen Company, and manager of that as well.

3945

XQ536. You have had practically the entire management of the business of the Modern Pen Company since Mr. Martling left about two years and a half ago? A. Yes.

XQ537. Prior to that you were assistant manager under him, were you not? A. Yes, under Mr. Martling.

XQ538. Do you remember making the paper which I now show you (handing witness a paper)? A. Yes.

The paper identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 133.

3946

XQ539. That states that it comprises all the assets of the A. A. Waterman & Company at that time; is that so? A. As far as I know, yes.

XQ540. You do not know of any other assets that it had except this? A. No.

XQ541. He says here in Exhibit 133 that the patents have heretofore been assigned to the Frazer & Geyer Company, amounting to $3,306.22. That included all the patents which A. A. Waterman & Co. had, did it? A. I think it did, yes.

XQ542. All those patents had some time before been assigned to the Frazer & Geyer Company, and credited on their books? A. Most of them belonged to the Frazer & Geyer Com-

3947 pany.

XQ543. Did you take any part in forming the copartnership between A. A. Waterman and the two Chapmans? A. I did not.

XQ544. You did not know anything about it until after it was formed, did you? A. I did not.

XQ545. You did not know anything about this preliminary agreement Exhibit A-12? A. No, sir.

XQ546. When did you first find out about Exhibit A-12? A. Today.

XQ547. How long was it before you found out about the partnership which had been formed between A. A. Waterman and the two Chapmans? A. I think along about the middle of

3948 June, 1905. They sent all the stockholders of the Frazer & Geyer Company notice of the reorganization.

XQ548. I show you the return of the sheriff on the sale of machinery and material, etc. of Frazer & Geyer Company and ask you if you know anything about the sale that occurred at about the time that that is dated (handing witness a paper)? A. This is as I understood it. They sold all the right, title and interest of the Frazer & Geyer Company and practically all of their assets.

XQ549. You do not know whether they had any other assets except these, do you? A. I do not know of any other.

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XQ550. Has any ever come into their possession since that you know of? A. No, sir, I don't know of any.

XQ551. The concern was defunct at that time was it not? A. It practically went out of business as far as I know.

XQ552. Never did any business since that time that you know of? A. No.

The paper identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 134.

XQ553. Those two transfers that you have identified as Plaintiff's Exhibit 134 and Plaintiff's Exhibit 133 closed out all of the assets that you knew anything about of A. A. Waterman & Co. and Frazer & Geyer? A. Yes.

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XQ554. And the good will does not appear on either one of these transfers? A. I presume "All the other personal property" covered that. I don't know.

XQ555. There was no separate transfer of any good will at any time that you know of? A. No.

XQ556. No sale by the sheriff or the receiver or anybody else of the good will that you know of? A. Nothing other than in those papers, that I know anything about.

XQ557. It was after you made this transfer that you made affidavit in the proceedings for a receiver for A. A. Waterman & Co. was it not, which I have shown you? A. If you will give me the dates.

XQ558. I show you Plaintiff's Exhibit No. 129. The affidavit on the application for receiver was the 21st day of June, 1905? A. I don't remember that.

3951

Mr. Bacon: I object to the question because there are several affidavits.

Mr. Watson: I have said "Exhibit No. 129"?

A. No, sir, it was three days before.

Mr. Watson: The affidavit in the proceeding for receiver, Exhibit 129, is verified the 21st day of June, 1901, and the transfer, Plaintiff's Exhibit 133, of the assets of

3952 the A. A. Waterman Company to the Frazer & Geyer Company is dated June 24, 1905.

Mr. Bacon: I ask that it appear upon the record that Exhibit 129 is a withdrawal of the witness from that suit and not a hostile affidavit. This is done in order that the Court may not be confused.

XQ559. This affidavit, Plaintiff's Exhibit 129, is in the same proceeding in which you have made the affidavit Exhibit 127, is it not? A. Yes, it is.

XQ560. And the order appointing a receiver, Plaintiff's Exhibit 130, which is dated July 10, 1905, is in the same proceeding
3953 which I last referred to, is it not? A. Yes.

Adjourned to Monday, April 17, 1911, at 10:30 A. M.

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HOBART W. GEYER, resumes the stand.

*Cross-examination continued by Mr. Watson:*

XQ561. From your previous testimony I understand that when you first went into the fountain pen business with Mr. Frazer you and he were manufacturing and selling Lincoln fountain pens? A. Yes, that was I think the only thing we made at the start.

3954 XQ562. What did you sell those pens for? A. From $1 up.

XQ563. Up as high as $5? A. Up as high as $10—$9 or $10.

XQ564. Those had a joint under the finger? A. Yes, that was the only style of fountain pen that was made in those days I think outside of Caw's Safety Pen and Horton's Safety Pen.

XQ565. Did you know that the first fountain pen that ever had any extended sale was the so-called self-filling fountain pen? A. No, I never have gone into the ancient history of fountain pens.

XQ566. When was it you first began to make self-filling fountain pens? A. To the best of my recollection in 1898 or

1899 we made self-filling fountain pens for S. S. Crocker of Boston. We made what was called "Blow" pens. That pen, briefly, consisted of a very thin rubber sack enclosed in a rubber holder, with a hole in the end of the holder, through which you blew as hard as you could and collapsed the sack and after it was collapsed you dipped it in ink and then it filled with ink. When we first made our own self-filling pens we had a heavier sack than the Crocker and we twisted it with our fingers.

By Mr. Macon:

XQ567. How early was that? A. Soon after Mr. Waterman came with us, to my recollection.

3956

By Mr. Watson:

XQ568. That was under a patent granted to Mr. Stone was it not? A. We had a patent on the aluminum sleeve, or the sleeve that we put in to protect the sack so that when you took the section with the sack out of the barrell it had something around it to protect it, a tube. I think the patent was on that tube; that is my recollection.

XQ569. That was a patent to Mr. Stone? A. I think there was no patent on the sack. I think the original patent on the sack had expired.

XQ570. The only patent you used was the Stone patent for the purpose of protection to the sack? A. I have forgotten now. We have so many patents I cannot keep track of them 3957 and of the dates.

XQ571. When was it that you began to make self-filling pens under the type you are now making them? A. I think it was in 1903; that is my recollection.

XQ572. When Mr. Waterman came down from Boston did you begin making middle joint fountain pens at that time? A. I think right after he came with us.

XQ573. Did you know that at least three different parties claimed the right to make pens that same way? A. No, I did not know it at that time. I have heard something about it since then; within the last month or two I heard so. The other question was not brought to my attention until within a month.

3958 *Hobart W. Geyer*

XQ574. Do you know that the Boston Safety Fountain Pen Company claimed to own the middle joint patent or at least had an interest in it?

Objected to.

A. It may be. I have had not heard it. I understood it was the Sterling Fountain Pen or the Davidson Rubber Company that claimed to have an interest in it.

XQ575. They claim to own all of it don't they? A. I don't think so. I run across some papers the other day that made me think they claimed it equally with Waterman and agreed to use it between them, or something of that kind.

3959 XQ576. When you began to make fountain pens the Waterman Ideal Fountain Pens were well known on the market, were they not? A. Yes.

XQ577. How long had you known about the Waterman pen at that time? A. I don't know that I was in any way at all acquainted with them until after I got into the business, because I had not paid much attention to it. I used the Lincoln pen made by Frazer. I had been using the Mercantile pen made by Aiken-Lambert Company.

XQ578. When you began to make the Lincoln pen you were in business as I recollect it from your testimony, about three or four years before you formed this partnership with Mr. Waterman? A. About four years; between three and four I think.

3960 XQ579. During that time did you become familiar with the Waterman's Ideal Fountain Pens on the market? A. I knew they were making practically the same kind of pen as we were.

XQ580. You knew they were making and selling fountain pens on the market did you not at that time? A. Yes.

XQ581. A well known concern at that time, on the market, weren't they? A. It was not any better known than our Lincoln pens.

XQ582. How long have you been making the Lincoln pen? A. Mr. Frazer had been making it for several years before I went with him. I don't remember how many.

3961

XQ583. Is it not a fact that he had been making them only a couple of years when you went with him? A. It may be two years; it may be five; I don't know.

XQ584. Don't you know that the Waterman Ideal Fountain Pen had been on the market ten or fifteen years at the time you first began to make fountain pens? A. No, I did not know that at that time.

XQ585. Don't you know it now? A. I know now that they started some time around 1884. I did not get into it until 1897, thirteen years later. Mr. Frazer had been in several years before that but at that time the fountain pen business was not anything like what it is at present; it was comparatively in its infancy. I think at that time the three principal fountain pens were the L. E. Waterman Company, the Wirt and ourselves.

3962

XQ586. How many of these notices, Plaintiff's Exhibit No. 9, were sent out? A. There were 9,000 printed. I don't know whether all of them were sent out or not.

XQ587. All of them as far as you know were sent out were they not? A. Practically all, I think. We had 9,000 catalogues at that time of the old catalogues left and we had just the quantity that we required for those catalogues. That is my recollection.

XQ588. Since the last hearing on Friday have you found out whether the judgment against you evidenced by Plaintiff's Exhibit 131 has been satisfied or not? A. I have not; I have not thought of it since.

3963

XQ589. Have you any information as to whether the judgment evidenced by Plaintiff's Exhibit 132 has been satisfied or not? A. I have not thought of either one of them since the hearing. I have had so many other things to occupy my time and attention.

XQ590. The fact that you find out, according to your testimony, for the first time, that you had a judgment against you for the sum of $25,000 does not interest you? A. It will interest me enough when I have the opportunity to take it up. Between this suit and my business it is keeping me hustling to find time to do anything.

XQ591. When this property of the Frazer & Geyer Company was sold by the sheriff for $4,900 was that sold subject to the chattel mortgage to which you referred in your direct-examination? A. That is my recollection of it, that it was.

XQ592. How much did those mortgages amount to? A. $30,000.

XQ593. And did the $30,000 include the $10,000 in the note which you said was a usurious note? A. What note is that? I don't remember that. I don't remember having seen any such note.

XQ594. You were shown a note on your direct-examination; it was not shown to plaintiff's counsel. Was that note included
3965 in the chattel mortgages of $30,000 which you have just referred to? A. I think that is one of them, yes. There was a mortgage for $20,000 and one for $10,000.

XQ595. Is this a copy of the note which was shown you on your direct-examination (showing witness the paper)? A. I don't remember. I don't remember the date of that, but I don't think it was that. It is possible that it was but I don't remember.

XQ596. Was the note, a copy of which I have just shown you, included in the chattel mortgages which you have referred to? A. I don't remember. No, that note could not, because the chattel mortgage is good for only a year and that note is dated more than a year previous to the time of the reorganiza-
3966 tion.

XQ597. Don't you know that it is sufficient to keep a chattel mortgage alive to re-file it? A. I don't know what the law is. I know something has to be done within a year.

XQ598. Is this note, a copy of which I show you, dated May 2, 1904, included in the $30,000 mortgages? A. I don't know whether it was the note or whether we had given a new note.

XQ599. Did they have other obligations besides the $30,000? A. There was one note for $10,000 and one for $20,000.

XQ600. Those are the ones that you refer to as part of the mortgage? A. I don't remember the date of those notes, no.

XQ601. I am not asking as to this particular note. I want to know if there are additional notes or obligations outside of the $30,000 mortgages which you have referred to? A. Notes—

XQ602. Notes of A. A. Waterman & Co. or Frazer & Geyer Company? A. I don't quite catch your question. That I referred to in what?

XQ603. In your direct-examination, you referred to a chattel mortgage? A. There are only two notes on that chattel mortgage, one for $10,000 and one for $20,000.

XQ604. I ask if the property sold as indicated, under Plaintiff's Exhibit 134, was subject to the note and mortgage which was shown you on your direct-examination? A. I don't know. I presume that was not the note. I don't remember. I have looked over that, and I have forgotten the date that was on it. 3968

XQ605. Do you know what obligations there were in the shape of notes and chattel mortgages of the Frazer & Geyer Company in June, 1901? A. There were two mortgages, two chattel mortgages, one for $10,000 and one for $20,000.

XQ606. Was there any additional note outstanding at that time except these two? A. We had loans from two or three banks and we had out some merchandise notes.

XQ607. Were there any notes to Chapman? A. No, there were no other notes to the Chapmans, to my recollection. I don't think we had borrowed anything else from the Chapmans.

XQ608. Since the examination Friday have you learned whether Mr. Henderson, the receiver appointed for the firm of A. A. Waterman & Co. by Mr. Justice Giegerich, filed his bond or not? A. I have not. I have not given it a thought. 3969

XQ609. Who was Mr. T. J. Quackenbush, 17 Battery Place? A. I think he is an employee of the Merritt & Chapman Company, the Derrick & Wrecking Company.

XQ610. When did Isaac E. Chapman become an officer of the Frazer & Geyer Company? A. Either late in 1901 or early in 1902 I think.

XQ611. What office did he take when he first became an officer in that company? A. I think he was vice president at first.

3970 *Hobart W. Geyer*

XQ612. How long did he continue vice president? A. I think something like a year or two.

XQ613. Then what office did he have? A. President.

XQ614. In 1903 or 1904 he became president? A. I think so, yes.

XQ615. Can you give the exact year when he became president? A. No, I don't remember the exact year.

XQ616. How early was he a member of the Board of Directors of the Frazer & Geyer Company? A. At the same time that he was made vice-president I think.

XQ617. After he became vice president he was a director and officer of the Frazer & Geyer Company at all times up to the
3971 dissolution of the company? A. Up to the sale of its assets. I don't know that the company has ever been dissolved.

XQ618. He continued up to the sale of its assets? A. Yes.

XQ619. And it has done no business since that time as far as you know? A. Not that I know of.

XQ620. When did William L. Chapman become a director of the Frazer & Geyer Company? A. I think a year or two after Mr. Isaac E.; I don't know positively.

XQ621. Did he have an office at that time? A. I think not until a short time before the reorganization. Then I think he was made vice president.

XQ622. Was he not made vice-president at the time Mr. Isaac E. Chapman was made president? A. No, not at first; I think
3972 not.

XQ623. He first became a director, you think, in 1902 or 1903? A. I think it was probably in 1904.

XQ624. That he became a director? A. Yes. I am hazy on that.

XQ625. When he became a director did he become an officer at the same time? A. I think so; that is my recollection but I am not sure of that.

XQ626. What office did you hold in the Frazer & Geyer Company? A. Treasurer.

XQ627. At all times? A. At all times.

XQ628. From its organization? A. From its organization

XQ629. What office did Mr. Frazer hold? A. Mr. Frazer was vice-president for a while and then afterwards he was made secretary and general manager.

XQ630. When these judgments which I have called to your attention were entered against the Frazer & Geyer Company, in June, 1905, as assets sold by the sheriff, who were the officers of the Frazer & Geyer Company at that time? A. Isaac E. Chapman was president; William L. Chapman, vice-president; William G. Frazer, secretary and general manager and I was treasurer.

XQ631. The first judgment in those litigations that were carried on at that time was against the Frazer & Geyer Company? A. I think so, yes. 3974

XQ632. Do you remember the amount of the judgment? A. No, I do not.

XQ633. As I recall, you testified that Frazer & Geyer Company sold A. A. Waterman fountain pens from August to November, 1899? A. From the 18th of August to the 6th of November, 1899, yes.

XQ634. How were those pens marked? A. I think they were marked "A. A. Waterman, Maker, Boston."

XQ635. The Frazer & Geyer Company made pens marked A. A. Waterman & Co. for the first time in August, 1899? A. I think along about November.

XQ636. November, 1899? A. Yes, that they were imprinted A. A. Waterman & Co. 3975

XQ637. Those were some that you sent to Boston, weren't they? A. They went to West Somerville.

XQ638. Were they not as a matter of fact shipped to the Colonial Pen Company in Boston? A. No, our dealings were entirely with A. A. Waterman & Co. of Howard Street, West Somerville.

XQ639. Do you know whether that circular was sent out or not (handing witness a paper)? A. I am quite sure that I received one of those.

The circular identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 135.

XQ640. The Frazer & Geyer Company was a New York corporation, was it not? A. Yes.

XQ641. And all of the stock that was issued in that company was full paid and non-assessable, was it not? A. Yes.

XQ642. The Modern Pen Company is a West Virginia corporation? A. Yes.

XQ643. As a matter of fact did not the Modern Pen Company which was organized by Mr. Chapman and his friends offer to issue its stock for $20 in cash and one share of Frazer & Geyer Company stock for each share of the Modern Pen Company stock? A. Yes.

3977 XQ644. What stock was issued to Mr. Quackenbush in exchange for the plant and property which he purchased under the sheriff's sale? A. I don't remember. The whole of the stock was issued to three or four parties, enough to form the corporation, and then it was re-issued to the various stockholders of the Frazer & Geyer Company, when they surrendered their stock in the Frazer & Geyer Company and paid $20 cash for the stock in the Modern Pen Company. The stock was bought in, or the assets or the right, title and interest, or whatever was sold at auction was bought in by Mr. Quackenbush in the interest of all the stockholders of the Frazer & Geyer Company and of the mortgagor.

XQ645. The stockholders of the Frazer & Geyer Company would not have any interest in Mr. Quackenbush's purchase un-

3978 less they put up their proportionate $20, would they, per share? A. No. They could have sold their stock; there was a market value for their stock and there was no trouble in selling it to parties who would pay them for it and then pay the $20 on each share to the new company. That is the only reorganization that I ever heard of where they did not try to freeze out some of the stockholders.

XQ646. In connection with Plaintiff's Exhibit No. 127, you mention in that affidavit a letter of Col. Alexander S. Bacon. Is this a copy of the letter which you referred to in that affidavit (showing witness the paper)? A. Yes, I think that is the one.

The copy of letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 136.

XQ647. You did not appear to think that the proposed reorganization was fair in 1905, did you? A. I thought it was fair to the stockholders but I did not think it was fair to me.

XQ648. Have the stockholders at any time ever realized anything from their stockholdings since the reorganization?

Objected to as immaterial.

A. Do you mean in the line of dividends?

XQ649. In any way. A. Not that I know of.

XQ650. In 1905, Mr. Isaac E. Chapman says that the formation of the firm of A. A. Waterman & Co. was nominal; that the firm was organized without capital, with this exception, that Frazer and Geyer took out of the funds of the Frazer & Geyer Company without consent and in violation of their duties as officers and trustees, the sum of $1,000 which they called a loan and credited it to A. A. Waterman & Co. as capital, $500 to each. Mr. Waterman put in no cash and Geyer and Frazer put in nothing except the forced loan from the Frazer & Geyer Company. Is this statement correct? A. As I understand copartnership laws, this was not a limited partnership and Mr. Frazer was worth several thousand dollars and I was worth anywhere from $10,000 to $12,000 at that time so that I cannot see that the firm of A. A. Waterman & Co. did not have considerable capital. That is the way I always looked at it. I knew that I was responsible for that much. 3980 3981

XQ651. Was it a fact that you only agreed to put in $500 each, you and Frazer, into the firm? A. That is all the working capital that we put in at that time, yes.

XQ652. Then Mr. Waterman put in no cash? A. He did not put in any cash, no.

XQ653. And is it true that this $500 each that you and Frazer put in was a loan from the Frazer & Geyer Company? A. I don't know that. I don't remember. I don't think so.

XQ654. You do not deny that that statement is true do you? A. I don't remember it. It is possible there may have been

some kind of book entry or transfer or something but I don't remember now.

XQ655. Do you remember that Isaac E. Chapman when he learned of that loan required you to pay it back? A. No. You asked me that last week. I don't remember. I did not have time to look it up.

XQ656. Do you remember anything about Mr. Chapman loaning Mr. Frazer $500 in order to pay his part of the loan back? A. No, I don't know anything about Mr. Frazer's financial affairs at all.

XQ657. All the profits of this partnership after paying 10
3983 per cent on this $1,000 was turned over to the Frazer & Geyer Company was it not, from the start? A. No, there was a modification of the co-partnership articles.

XQ658. When was all the profit turned over to the Frazer & Geyer Company? A. I don't remember the date. It is possible that it was all done but when we formed the partnership there was no such intention.

XQ659. The fact is that never at any time any one of you partners ever received anything from the A. A. Waterman & Company except what you got through the Frazer & Geyer Company; is that correct? A. I don't remember that.

XQ660. Are you prepared to say that is not so? A. No, I would not say it was not so. I don't remember just when that modification was made.

3984 XQ661. Did not you and Mr. Frazer make the assignment first, and then afterwards did not A. A. Waterman make an assignment of all that interest in the firm of Waterman & Co. to the Frazer & Geyer Company—all the profits? A. A. A. Waterman could not assign our profits.

XQ662. You and Frazer first assigned your individual interests in the firm of A. A. Waterman & Co. to the Frazer & Geyer Company? A. We did, but I don't remember just the date.

XQ663. It was soon after this firm was formed was it not? A. It was within a year.

XQ664. Was it not within a few months after it was formed? A. I don't remember. It may be.

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XQ665. Very shortly after you and Frazer assigned all your interests in the firm of A. A. Waterman & Co. to the Frazer & Geyer Company, A. A. Waterman also assigned his interest in the firm of A. A. Waterman & Co. to the Frazer & Geyer Company, did he not?

Mr. Bacon: Objected to; the assignment is the best evidence, and is already in evidence and indicates on its face just what Mr. Waterman retained for himself.

XQ666. The assignment of your interest and that of Mr. Frazer, in the firm of A. A. Waterman & Co. to the firm of Frazer & Geyer Company was made on the 27th day of August, 1901, was it not? A. Yes.

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XQ667. And the assignment of A. A. Waterman of his interest in the firm of A. A. Waterman & Co. to the Frazer & Geyer Company was made December 12, 1901, was it not? A. Yes.

Recess.

Mr. Watson: Plaintiff offers in evidence certified copy of affidavit of Isaac E. Chapman verified June 20th, 1905, in the action entitled Hobart W. Geyer and William G. Frazer against A. A. Waterman and Gratz Nathan, receiver.

Same objections.

Marked Exhibit No. 137.

3987

Mr. Watson: Plaintiff offers in evidence an affidavit in the same proceeding of Alexander D. Henderson verified the 8th day of July, 1908.

Mr. Bacon: Objected to as irrelevant and immaterial.

Marked Exhibit 138.

Mr. Watson: Counsel for plaintiff states upon the record that Mr. Henderson's bond as receiver of the firm of A. A. Waterman & Co. was approved and filed July 14th, 1905; and the order discharging the receiver and canceling the bond was entered and filed on the 15th day of July, 1908.

XQ668. Mr. Chapman in his affidavit verified June 20, 1905, states that on June 16th, 1905, all the property of the Frazer & Geyer Company was sold at auction and bid in by Mr. T. J. Quackenbush; is that so? A. It was about that date as I understand.

XQ669. The date is correct no doubt but is the rest of it correct? A. I was not at the sale but I understood that he bought it in. That is my recollection.

XQ670. He also says that Mr. Geyer was a person of no means, that he is not a practical penman but is a bookkeeper and accountant only. Is that correct? A. No.

3989 XQ67. "Frazer & Geyer Company is now divested of all its assets of every name and nature whatsoever"—referring to this sale. That is so? A. As far as I know it is.

XQ672. When these assets were bought in by Quackenbush he bought them subject to the chattel mortgage of $30,000 which you have referred to? A. That is my understanding, yes.

XQ673. When he turned this property over to the Modern Pen Company he turned it over subject to the two mortgages? A. Yes.

XQ674. And the company afterwards made a new mortgage and cancelled the old one? A. Yes.

XQ675. Mr. Chapman in that same affidavit verified June 20th, 1905, stated that the firm of A. A. Waterman & Co. (referring to the partnership of Waterman, Frazer & Geyer)
3990 "is insolvent; and owes far more than its assets." Was that true? A. I think it was at that time, yes.

XQ676. Mr. Chapman also says in the affidavit verified June 20th, 1905, that Mr. Frazer received a salary from the Frazer & Geyer Company of $50 per week; he took nothing from the partnership; is that correct? A. He had his 10 per cent on the capital invested.

XQ677. Ten per cent on the $500? A. Yes. The profits that we had made were turned back to the Frazer & Geyer Company as per agreement.

XQ678. Did you ever at any time receive any profits whatsoever from the firm of A. A. Waterman & Co. composed of

yourself, Mr. Frazer and Mr. Waterman except the 10 per cent on the $500? A. I think not; I am quite sure not.

XQ679. But you are not prepared to say that that $500 was not borrowed from the Frazer & Geyer Company as Mr. Chapman states? A. No, I don't remember the details of that.

XQ680. And you are not prepared to say that the $500 Mr. Frazer put into the company was not also borrowed from the Frazer & Geyer Company?

Mr. Bacon: Objected to as immaterial.

A. If mine was borrowed his certainly was.

XQ681. You are not prepared to say that they were not borrowed? A. No, sir; I don't remember just the circumstances now. 3992

XQ682. Were not the accounts of the Frazer & Geyer Company and A. A. Waterman & Co. carried together as one account? A. No, sir; entirely separate.

XQ683. All these statements which you have produced here regarding the organization and the company, all show the accounts together, carried as one account. Was not that the way they were carried on the books? A. What statement is that? This (referring to paper) is the liabilities of the Frazer & Geyer Company.

XQ684. Did not that include all the assets of the partnership of A. A. Waterman & Co. also? A. I think not. I did not make up those figures. 3993

XQ685. You are not prepared to say they did not? A. While we used to make up a statement showing them combined, they were simply adding the two sets together for convenience sake.

XQ686. I show you what purports to be a statement of the Frazer & Geyer Company of December 31, 1902, and I ask you if that is not a statement of the combined assets of the firm and the Frazer & Geyer Company? A. No, this must be the statement of Frazer & Geyer Company.

XQ687. Does that include all of the assets of the firm of A. A. Waterman & Company at that time? A. It cannot.

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XQ688. You are prepared to say that did not include all the assets of the firm of A. A. Waterman & Co. at that time? A. The assets of the A. A. Waterman Company could not show on the statement of Frazer & Geyer Company. They were kept entirely separate. We always used to get out a statement of the Frazer & Geyer Company and a statement of A. A. Waterman & Company and then we would get out another one combining those so as to get them in a condensed form as to how both concerns stood.

XQ689. As a matter of fact did not all the assets of the partnership belong to the Frazer & Geyer Company? A. No. We were in debt to the Frazer & Geyer Company for the goods
3995 that we bought from them and had not paid for.

XQ690. As a matter of fact all of the profits of the partnership had been assigned to the Frazer & Geyer Company hadn't they?

Mr. Bacon: Objected to as the assignment in evidence shows the contrary.

A. No, Mr. Frazer and I assigned ours. As to Mr. Waterman, I have forgotten just now. He sold quite an interest, and took some stock in the Frazer & Geyer Company for his royalty. I have forgotten what he did with his profits.

XQ691. Didn't he as a matter of fact turn all of the profits in the partnership to the Frazer & Geyer Company?

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Mr. Bacon: Objected to as the exhibits speak for themselves.

A. I have forgotten.

XQ692. Will you look at the exhibit and see what it says? A. Is it in here (referring to book)?

XQ693. Yes, at page 639? A. Mr. Frazer and myself got 10 per cent on our investment, for our share of the profits and Mr. Waterman got $100 for every one per cent of profits of the Frazer & Geyer Company in addition to the 50 shares of stock of the Frazer & Geyer Company that was paid him. Mr. Waterman also had his salary. I think it was $2,000 a year. That is my recollection.

XQ694. Will you please look at the assignment again and tell me if the $100 and the one per cent that you have referred to was to come from the Frazer & Geyer Company or from the partnership? A. Mr. Waterman got his salary and expenses from A. A. Waterman & Company, and he got stock from Frazer & Geyer Company and also the $100 for 1 per cent of profits.

XQ695. He got the one hundred dollars from the Frazer & Geyer Company? A. Yes.

XQ696. And $100 for every one per cent of profits he got from the Frazer & Geyer Company? A. Yes, and his salary and expenses from A. A. Waterman & Company.

XQ697. And the salary and expenses which he was to receive 3998
was as a matter of fact actually paid by the Frazer & Geyer Company was it not? A. No, it was paid by A. A. Waterman & Co.

XQ698. Is the statement correct made in the affidavit of Frazer in the suit of Geyer and Frazer against Waterman and Nathan, verified June 22, 1905, that the claim which Frazer & Geyer Company made against the partnership of A. A. Waterman & Co. was largely a matter of bookkeeping? A. I don't remember what that affidavit is.

XQ699. Was the claim that Frazer & Geyer Company made against the partnership of A. A. Waterman & Co. largely a matter of bookkeeping? A. I have forgotten what the claim was. There was a claim of $10,000 or $12,000, something like 3999
that, that was correct.

XQ700. You testified on your direct-examination that there was an assessment made on the stock of the Frazer & Geyer Company on the reorganization. You could not legally assess that stock at all could you? A. I don't know that I said that.

XQ701. I will read it to you: "Q254. Was there any assessment made on the stock? A. There was an assessment of $20 a share." A. There was no assessment made on the stock of Frazer & Geyer Company.

XQ702. You could not make any assessment on that stock, could you? A. No, sir.

XQ703. The stock was unassessable? A. It was non-assessable. To get stock in the Modern Pen Company in the reorganization it was necessary to pay $20 a share and put in a share of Frazer & Geyer Company's stock.

XQ704. You testified that you have made 1188 pens for John Saadi which were marked "Royal Ideal" pens. Is that so? A. "Royal Ideal" pens on the holder.

XQ705. Those were fountain pens complete that you furnished to John Saadi weren't they? A. Yes.

XQ706. Why did you try to make it appear in the affidavit that they were merely the holder? A. I said that the holders were imprinted "Royal Ideal" but not the pen point.

4001 XQ707. You say "Saadi requested deponent to sell him certain penholders marked Royal Ideal pens and deponent thinking that of course he had a right to use that trade-mark duly authorized by the Government, had made for him a small order of penholders with that name stamped on them." As a matter of fact they were complete fountain pens weren't they? A. The imprint was on the holder only; it was not on the pen. The Waterman people put "Ideal" on the holder and pen both. This was put on the holder only.

XQ708. You have seen the certificate of Mr. John Saadi, the paper which you call a trade-mark, have you not? A. I saw it in Washington.

XQ709. A copy of it is in evidence in this suit, is it not? A.

4002 Yes.

XQ710. It is not a trade-mark at all, is it? A. That is what I understood, that it was a trade-mark.

XQ711 Have you not seen it? A. I simply saw it as he passed it over there at Washington. As I understand it, it was a trade-mark granted by the United States Patent Office.

XQ712. You do not know it is a label, do you? A. No, I understood it was a trade-mark. I think it is.

XQ713. Do you know that the man Saadi had no trade-mark of the word "Ideal" for fountain pens and could not have any registered trade-mark for the word "Ideal" for the reason that the L. E. Waterman Company had already registered that trade-mark? A. I understood that was a trade-mark.

XQ714. The statement is correct that you made 1188 of these pens bearing this mark "Royal Ideal Pens"? A. Yes, Royal Ideal pens.

XQ715. Which ones of the fountain pens bore the name A. A. Waterman & Co.?

Mr. Bacon: I object to that question as none of the fountain pens bore that name—only the pen point.

XQ716. You testified that these were complete fountain pens? A. The imprint on the holders only. That was my testimony. The gold pens Nos. 12 and 15 had pen points imprinted A. A. Waterman & Co.

4004

XQ717. 792 of these gold pens that you furnished Saadi bore the name A. A. Waterman & Co.? A. No, 468 had pens with the imprint A. A. Waterman & Co. and he afterwards returned 179 of those pen points.

XQ718. All of the pens you furnished John Saadi were fountain pens complete, finished goods, ready for sale, were they not? A. Yes.

XQ719. And there were 1188 of them? A. Yes.

XQ720. And of these the Nos. 12 and 14 bore the name A. A. Waterman & Co. didn't they? A. 12 and 15 I think it was.

XQ721. Are you sure which numbers it was? A. No. 12 and No. 15. Yes, I am sure.

4005

Mr. Bacon: I object to that question on the ground that it has already been brought out with great clearness that A. A. Waterman & Co. was on the pen point only.

XQ722. When did you first see the complaint which the Waterman Company filed against John Saadi? A. I will have to have that correspondence.

XQ723. Didn't he notify you right away after the case was filed? A. Yes, it strikes me that it was early in December, 1909. That is my recollection. It was within a couple of weeks after we sent in the last lot of goods, the third lot. We sent him the last lot December 4, 1909, and it seems to me it was

within ten days or two weeks after that to the best of my recollection that he wrote me or telegraphed me. His correspondence is all here in evidence. I cannot remember the dates.

XQ724. You first heard of this case in December, 1909. Right after that you heard of it for the next month or so several times, didn't you? Did not Mr. Saadi see you several times, or two or three times? A. No, he did not see me over once.

XQ725. And that was very shortly after the suit was begun? A. I have forgotten now. I have no way to fix that date.

XQ726. Did he come here to New York and see you about
4007 that suit very shortly after it was begun, within a month? A. I think not but I am not positive. I have not any way of telling when he was here. He has not seen me in New York over twice since the suit was begun and I have seen him once in Washington. That was when we went on there, when he was examined in this suit. Those are the only times I have seen him.

XQ727. You read the complaint in the case of Isaac E. Chapman and William L. Chapman against the L. E. Waterman Company filed in the Supreme Court, State of New York? A. I think so but I would not be sure.

XQ728. You don't remember anything about it now? A. It is a long time ago.

XQ729. It was filed some time in February, 1910, was it not?
4008 A. About that time.

XQ730. Do you remember the statement that was contained in the complaint, "That no pen manufactured by the plaintiff bear or ever has born the name Ideal"? A. Yes.

XQ731. That is a positive absolute statement made in the complaint? A. I did not consider that "Royal Ideal" was the same thing at all.

XQ732. You do not consider that the word Ideal is in the name at all? A. I did not consider it in that connection, no.

XQ733. You think then this statement is perfectly true that no pen manufactured by the plaintiff bears or ever has born the name Ideal? A. That was my understanding.

XQ734. That is your understanding now, is it? A. No, I have learned something since then about trade-marks that I did not know then.

XQ735. Do you think you would have to have any knowledge of trade-marks to know that a statement like that was untrue? A. Yes. I presumed that the Ideal was the same as the Waterman people used.

XQ736. Is not that word the same as the Watermans use, Ideal? A. Their word is Ideal and this is "Royal Ideal." I presume that is why he was able to get a trade-mark for his goods.

XQ737. "No pen manufactured by the plaintiffs bears or ever has born the word Ideal." That was absolutely a false statement was it not? A. It bore the word Ideal in connection with Royal, as the man's trade-mark called for; as I supposed it was a trade-mark. You say different. 4010

XQ738. And this statement in this complaint is an absolutely false statement isn't it? A. No, it did not have Ideal; it had a double word, Royal Ideal.

XQ739. Is that a true statement? A. I think so, yes.

XQ740. You think that is a true statement still? A. I said yes.

XQ741. You have read the answer of the Waterman Company in the Chapman suit have you not? A. I think so. Those papers were very voluminous.

XQ742. You do not remember reading the answer? A. I presume I read it. 4011

XQ743. You do not know whether Mr. Isaac E. Chapman saw the answer to the complaint in Chapman against Waterman? A. I don't remember whether he did or not. I presume he did. I don't know.

XQ744. Returning to these pens you made for Saadi, you say in this statement that you sold the No. 11 holders at 14 1/2 cents and that they cost you 12 cents. Is that a true statement? A. Yes.

XQ745. And out of that 14 1/2 cents for which you sold them you deduct a commission of 10 per cent which you paid the salesman? A. Yes.

XQ746. That would be 1.45 cents wouldn't it? A. Yes.

XQ747. And after you deduct that commission of 10 per cent to the salesman you deduct 10 per cent more for office expenses? A. Yes.

XQ748. That would be another cent and a half. That would be approximately three cents which you deduct from the selling price? A. Yes.

XQ749. Which would make the selling price 11 1/2 cents and they cost you 12 cents? A. Yes.

XQ750. So that you really lost half a cent on each holder? A. Yes. Do you want me to show you how I did it? I did not know I was losing money until I came to dissect the thing
4013 like this (showing figures to Mr. Watson.)

XQ751. What sizes does that No. 12 that you sold to Saadi correspond to in the L. E. Waterman goods? A. That had a No. 2 pen in it. I think it is a trifle smaller than Waterman's Ideal No. 12. It practically corresponded to our dollar pen.

XQ752. What did the No. 11's correspond with? A. That was a blown holder and does not correspond to anything in the Waterman Ideal line.

XQ753. What does the No. 14 correspond to that you sold Saadi? A. The No. 14 was a blown holder too and does not correspond to the Waterman Ideal. Those two, the 11 and 14, were imprinted on the cap and not on the barrel.

XQ754. What size is this pen Plaintiff's Exhibit No. 14,
4014 which is one of the Saadi pens? A. That is a number twelve.

XQ755. How did you come to mark these Saadi pens as Nos. 11, 12, 14, 15? A. Those are the numbers that he ordered them by.

XQ756. Didn't you know that those were the numbers used by the L. E. Waterman Company? A. No, I don't think they have any 11; they have 12, 13 and 14. I did not know they had any monopoly on numbers because the numbering in the fountain pen trade is like numbering in the shoe trade; they key everything by numbers. They come in sets.

XQ757. It would help to distinguish their goods, where there are similar marks, from those of the Waterman Company, if

you used the same numbers, wouldn't it? A. I don't think so. I don't think anybody buying a pen looks at the holder to see whether there is a number on it or not. I have never sold pens at retail. I don't know what the custom is.

XQ758. The mark used on the pens which you marked Royal Ideal pens had a design somewhat similar to that of the Globe, didn't they, used by the L. E. Waterman Company? A. I think it had a map of Africa.

XQ759. Very similar in its effect to the fountain pen, is it not? A. I think not.

XQ760. No similarity between them? Don't you recall it? A. I recall it as a map of Africa which is nothing like a globe.

XQ761. Round like a globe? A. No, not round; anything but round. 4016

XQ762. I call your attention to the stamping on the pen, Waterman's Ideal Pen, with a globe, and Royal Ideal Pen, with the resembling marks on it? A. It is hard to make out the marks on the Royal Ideal. If it is an intimation it is a mighty poor one.

XQ763. Did you ever make any other fountain pens for anybody else that had any marks on it in simulation of the plaintiff's trade-mark Ideal? A. No, sir.

XQ764. Nothing that resembles the trade-mark Ideal or any other pen? A. Nothing whatever.

XQ765. In connection with any other marks whatsoever? A. No. That is the only offence. 4017

XQ766. Have you ever made any fountain pens for Warren N. Lancaster of Baltimore which had the word "Idea" on it? A. No. He wanted me to once.

XQ767. You never made any though? A. No. He brought them in to me and wanted me to and I told him there was nothing doing. This was after the Saadi affair so that I had had my eye-teeth cut.

XQ768. You have been attending to this litigation pretty carefully since it started, have you not? A. I have.

XQ769. You have been attending the hearings? A. Yes.

4018

XQ770. And you helped to prepare the pleadings in the Chapman case and in the case at bar didn't you? A. I don't quite catch what you mean. I helped prepare my own affidavits. That is the only thing I know of.

XQ771. That necessitated your knowing what the litigation was about and what the other witnesses were swearing to did it not? A. I think I went over most of those affidavits.

XQ772. And you verified the answer in this case? A. Yes.

XQ773. This bill of complaint, the original bill of complaint in this action, was served on April 11, 1910. It was prior to that time that the answer in the Chapman case had been filed, was it not? A. I presume so. If you will show me the date

4019

I can tell. (Looking at the book.) Yes.

XQ774. The answer of the L. E. Waterman Company in the Chapman suit set up their claims fully, did it not? A. I presume so. I have forgotten just what the answer was now.

XQ775. Suppose you look at the answer and see if it does not set up their claims pretty well.

Mr. Bacon: Objected to as the answer shows for itself and this witness cannot tell whether it did or not.

A. They appear to be.

XQ776. And the Modern Pen Company had notice and knowledge of the plaintiff's rights as they claimed them, prior to April 11, 1910, didn't they? A. They had knowledge of

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what they claimed were their rights.

XQ777. On what ground does the defendant claim to use the name A. A. Waterman & Co.?

Mr. Bacon: Objected to as immaterial and calling for a conclusion; that this witness not being a Court or a lawyer cannot tell.

A. As far as I know it is on the ground of the contract with the Modern Pen Company and A. A. Waterman & Co.

XQ778. The contract of June 12, 1905? A. It was about that date. I think that contract was put in evidence here.

XQ779. Which contract do you refer to—contract between whom? A. Between the Modern Pen Company and A. A.

Waterman & Company. I did not have anything to do with it so I don't know. I am not a member of the firm of A. A. Waterman & Co. When they began working I was made an officer of the Modern Pen Company so I simply know that I have taken up the work as I found it.

XQ780. You are manager of A. A. Waterman & Co.? A. Yes.

XQ781. On what ground do they claim the right too use the name A. A. Waterman & Co.? A. On the ground of their copartnership articles with A. A. Waterman.

XQ782. The copartnership articles of June 12, 1905, you refer to? A. I think it is June 12, yes.

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XQ783. As far as you know is that the only ground on which they claim the right to use the name A. A. Waterman & Co.? A. As far as I know. It all came about through the reorganization which was simply a continuation of the old contract with new partners; the same as Frazer and myself and A. A. Waterman.

XQ784. On what ground did you and Frazer and Waterman claim the right to use the name A. A. Waterman & Co.? A. On the ground of the copartnership; common law, as I understand it.

XQ785. You refer to the copartnership agreement of January 9, 1901? A. Yes.

XQ786. Does the present concern, which calls itself A. A. Waterman & Co. claim the right to use the name A. A. Waterman & Co. under Judge Kellogg's decree? A. No, they claim the right under their copartnership articles and we claim that Judge Kellogg's decree distinctly states that they had the right to use the firm name but not a corporate name.

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XQ787. They were not parties to that judgment against Waterman and Gibson, were they? A. Not at that time but they were successors.

XQ788. Who were they successors to?

Objected to as immaterial.

4024 *Hobart W. Geyer*

A. The present firm succeeded the firm of A. A. Waterman & Co. of which William G. Frazer and myself and A. A. Waterman were members.

XQ789. You have just read that paper which shows that the firm never sold its good will? A. It does not say it never sold its good will.

XQ790. You testified so yesterday? A. I said they sold all the personal property, if that term would cover the good will.

XQ791. Do you know that the Court passed on that thing when it appointed a receiver? A. No. I did not know they appointed a receiver until you showed me the paper.

4025 XQ792. Didn't I ask you expressly if they sold the good will and you said no? A. I said they sold all the personal property and I presumed that covered the good will.

XQ793. I ask you distinctly if they sold the good will and the answer was no. I appeal to the record? A. I am quite sure.

XQ794. You are willing to stand on your answer whatever it was? A. I will stand on the answer as I have just given it. It is the same it was before. I am not trying to say one thing yesterday and another today and another different tomorrow. I am trying to tell the truth.

XQ795. Will you please explain to me how there could be any assignment from the concern A. A. Waterman & Co. consisting of yourself, Mr. Frazer and Mr. Waterman to the present

4026 concern?

Mr. Bacon: Objected to as immaterial.

A. As I understand copartnership law one partner can sell all the assets of the partnership.

XQ796. Will you please answer the question? A. I am not a lawyer. I don't know what the law is.

XQ797. Who sold it? A. You have that in the record here. Mr. Waterman and myself sold it.

XQ798. That is what you rely on, that transfer that you and Mr. Waterman made?

Mr. Bacon: I object. It is for the Court to say and not this witness.

A. I am not relying on anything. I am not a member of the firm of A. A. Waterman & Co.; I am simply manager for them.

XQ799. Did you think you were selling the good will of A. A. Waterman & Co. when you made that assignment to the Frazer & Geyer Company? A. Yes, I certainly did.

XQ800. Why did you take part in the receiver proceedings then? A. I don't think I did.

XQ801. You did not take part in the proceedings for a receiver and injunction in which you were plaintiff with Mr. Frazer and in which I have shown you half a dozen orders, affidavits and other papers? A. I started in on that and as I told you before when Mr. Frazer said he was going to wreck the whole thing so as to make the Chapmans lose their investment 4028
I told him he could not use me for any such purpose. I told him I would have nothing more to do with it.

Mr. Watson: I move to strike out the answer as irresponsive.

Mr. Bacon: I object.

Mr. Watson: The witness is cautioned to answer the question. The question is repeated.

A. (Repeated.) I started with Mr. Frazer in it and then dropped out as I have explained.

XQ802. And the receiver as a matter of fact was appointed for the firm in that action? A. So you told me last Friday. I think you showed me the papers. 4029

XQ803. Don't you know that that is the fact? A. As I say I think you showed me the papers, showing that there had been a receiver appointed. I think that is all in the record. I did not know it at the time.

XQ804. Were there any other transfers that you know of at any time except the one that you and A. A. Waterman pretended to make, of the assets or good will of A. A. Waterman & Co., to anybody? A. I don't remember pretending to make any.

XQ805. Is this transfer Plaintiff's Exhibit 133, the only one you ever made? A. I think so. It is the only one I remember.

XQ806. That is the only transfer or assignment that you ever knew of being made by anybody of any of the assets of A. A. Waterman & Co.? A. That is the only one I remember.

XQ807. And that is the one that you referred to when you said that there was an assignment? A. I don't remember that I said that. I don't quite catch your question.

XQ808. A few moments ago you testified that all of the good will had been assigned. That is the one you referred to? A. Yes.

XQ809. This assignment was made to the Frazer & Geyer Company, was it not? A. Yes. It says, "All its assets of every
4031 name and nature whatsoever." If that does not cover good will I don't know what does.

XQ810. As a matter of law it does not. This transfer was made to the Frazer & Geyer Company, was it not? A. Yes.

XQ811. It was not made to a new concern like A. A. Waterman & Co., was it? A. A. A. Waterman & Co. was indebted to the Frazer & Geyer Company and they assigned those to off-set the amount of this indebtedness.

XQ812. They assigned everything they had to the Frazer & Geyer Company, didn't they, as you claim? A. What it says there, yes.

XQ813. And the assets of the Frazer & Geyer Company were sold by the sheriff, were they not? A. I think they were sold
4032 by the sheriff before that assignment was made. I am not sure though, on that.

XQ814. Was there ever an assignment made by the Frazer & Geyer Company of these assets, covered by this assignment I now show you, Plaintiff's Exhibit 133? A. I don't remember. There may have been.

XQ815. When was the Modern Pen Company incorporated? A. I think it was the latter part of June, 1905.

XQ816. Have you not got the exact date that you can give us? A. I haven't it here. I will have to look up the minutes to find out.

XQ817. When did they begin business? A. Just as soon as they were incorporated.

XQ818. That was in June, 1905? A. I think so.

XQ819. When was this $20 which you call an assessment on the Frazer & Geyer stock paid in? A. Some time in June or July, 1905, I think.

XQ820. Does not this letter which I show you call for the payment before June 26, 1905 (handing witness the paper)? A. My recollection is that they did not hold to that date, that they gave them a longer time in which to pay the voluntary assessment.

XQ821. Does the statement in Plaintiff's Exhibit 135 that the Modern Pen Company had already been organized on June 21, 1905, refresh your recollection as to the time it was organized? A. No, I did not have anything to do with the organization and I do not remember just the date. 4034

XQ822. Can you look it up and advise us at the next hearing when the company was organized and began business? A. I think so. I do not keep the minutes but I will try and find out.

XQ823. You testified that you were a director and officer of the Frazer & Geyer Company in May and June, 1905? A. I was an officer from the time it was organized until it was wound up.

XQ824. When was it wound up? A. I think it was the early part of June, 1905. The sheriff came in and then I was dispossessed, as they say. 4035

XQ825. You have not had anything to do with that company since? A. No, the sheriff took charge of all its effects.

XQ826. Has there ever been a directors meeting since the sheriff took control of the property? A. Not that I remember.

XQ827. Would you remember if there had been? A. No, sir; they have so many meetings; I would not be likely to. I have no recollection at all of any such meeting.

XQ828. You were the treasurer of the company at that time? A. I was treasurer during its whole existence.

XQ829. And after the sheriff came in and levied on the stuff which was sold, that ended the Frazer & Geyer Company as far as you have any recollection whatever? A. I have a dim recollection that its books were balanced up or final entries were made in them as of the sheriff's sale.

XQ830. You do not remember any further assignment or any meeting of directors or any action by any of its officers after that time? A. I don't remember any, no.

XQ831. Do you remember when you first got out your stationery for the Modern Pen Company? A. No, sir, I did not have anything to do with it.

4037 XQ832. Were you not connected with the Modern Pen Company at the time it was started? A. No, I think not. I was out for awhile, after I left Mr. Frazer. All that detail work had been done by somebody else.

XQ833. When did you come back? A. I don't remember the date now.

XQ834. Was it a month or two months or six months or six years? A. The latter part of June or the early part of July.

XQ835. When did you send your first salesman out? A. I don't know. I have no recollection of that. It may have been a month later. I don't think any went out until August. I did not have charge of that end of it at that time. I did not have any way to remember it.

4038 XQ836. Is it not a matter of fact that you did not do any business until August 15th, 1905, in the Modern Pen Company? A. I think they did business right from the start. I think they begun business just as soon as they were organized. In fact I know the business was going along all the times. The factory was never closed down at all, neither was the office.

XQ837. What does the firm of A. A. Waterman & Co. own around there now—anything at all? A. Yes, they own all the goods that are being made up. We buy them from them when they are made up.

XQ838. They do not own any of the factory do they? A. Not the plant, no.

XQ839. Is it not a matter of fact that all your accounts there are kept together? A. I have testified that they were not kept together. We keep separate sets of books. They are entirely separate.

XQ840. Does the firm of A. A. Waterman & Co. owe the Modern Pen Company now? A. The Modern Pen Company is now selling agent for the A. A. Waterman & Company. Before it was the other way around.

XQ841. The old concern in which you were a partner, A. A. Waterman & Co., never manufactured any goods at all did they? A. They did the assembling, the same as the L. E. Waterman Company testified they do in their manufacture.

XQ842. The present concern of A. A. Waterman & Co. does not do any selling at all except to the Modern Pen Company, does it? A. That is all. 4040

XQ843. Have you ever advertised in any public print that you were the successors of A. A. Waterman & Co. of Boston? A. I don't think so.

XQ844. Did you ever hold yourself out at any time as the successors of A. A. Waterman & Co. of Boston? A. I don't remember. Mr. Waterman and Mr. Frazer attended to those things at that time and I don't know whether they did or not. It may have been but I have forgotten it if it was.

XQ845. Then you don't remember it now? A. I have no recollection of any such thing.

XQ846. When did you first claim to be the successors of A. A. Waterman & Co. if ever? Did you ever claim to be the successors of A. A. Waterman & Company of Boston? A. I think not. 4041

XQ847. This certificate which was filed in the County Clerk's Office on February 21, 1910, was the first certificate of that character that was ever filed that you knew anything about, was it not? A. As far as I know, yes.

XQ848. Did you ever file or acknowledge a similar certificate for A. A. Waterman & Co. composed of yourself, Mr. Frazer and Mr. Waterman? A. Not to my knowledge. I don't remember it. It may have been done but I have not any recollection of it at all.

4042 *Hobart W. Geyer*

XQ849. Did the present concern of A. A. Waterman & Company at any time advertise itself as the successor of the A. A. Waterman & Company of which you were a member? A. I don't know.

XQ850. Did you ever see any such advertisement? A. I don't remember any such.

XQ851. Did they ever claim that they were successors of that firm? A. I don't know.

XQ852. You never heard anybody claim that did you? A. I don't remember any such claim.

XQ853. Did you ever know anybody to claim that the present
4043 concern of A. A. Waterman & Company is the successor of the A. A. Waterman & Company of Boston? A. I think in the suit they have claimed they were privies.

XQ854. Did you ever know them to claim it any other place, at any other time, anywhere? A. I don't remember. I don't think that occasion ever came up.

XQ855. Did the present concern of A. A. Waterman & Co. pay the debts of the copartnership of which you were a member? A. I think the Modern Pen Company paid those debts.

XQ856. Paid them all? A. Yes, outside of the mortgage. The mortgage was a Frazer & Geyer Company affair, endorsed by A. A. Waterman & Company.

XQ857. Did the Modern Pen Company pay the partnership debts and judgments, which I have referred you to here in this
4044 testimony? A. Who were those judgments in favor of?

XQ858. They were in favor of the Frazer & Geyer Company and the Chapmans? A. Not to my knowledge. As I told you I did not know anything about those judgments until you brought them up and I have not looked at them at all since. I don't know whether they are still standing or not.

XQ859. Didn't you know that the Chapmans offered to transfer these judgments, in the negotiations which they were making for the sale of the Modern Pen Company business? A. I never heard them mentioned at all.

XQ860. That they were to transfer those as part of the consideration in that transaction? A. I never knew anything of

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the kind; I never heard of the judgments until Friday when you mentioned them here. That is, the judgments against myself. I understood they got a judgment against Mr. Frazer but I thought that was on another matter.

XQ861. You had nothing whatever to do with these negotiations for the sale of the business, as discussed on your direct-examination? A. Except as it was brought up at the directors' meetings.

XQ862. You had no conferences with me at any time regarding it? A. No.

XQ863. You had no conferences with F. D. Waterman on the subject? A. Only the time that they were down there on Sunday.

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XQ864. Did he tell you whom he represented when he was down there? A. No.

XQ865. Did Mr. Ferris say whom he represented when he was down there? A. No.

XQ866. Did you know that Mr. Ferris and Mr. Frank D. Waterman, the men who visited your factory, were both officers of Aiken-Lambert Company at that time? A. No.

XQ867. Did you know they were connected with the Aiken-Lambert Company at that time? A. I don't remember now.

XQ868. Do you remember it now? A. No. I don't remember the date the Aiken-Lambert Company was bought in by L. E. Waterman Company.

XQ869. You heard the testimony of Mr. Ferris that he was an officer of the Aiken-Lambert Company at that time didn't you? A. I don't remember, I don't know. I will not deny it at all.

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XQ870. And the order that came for gold pens came from Aiken-Lambert? A. Yes, it was sent by Aiken-Lambert.

XQ871. And the pens were plain pens marked 14 karat? A. Just stamped 14 karat.

XQ872. Did you ever see L. E. Waterman Ideal pens with a plain pen, marked 14 karat? A. No, but we understood that the L. E. Waterman Co. made other pens without their imprint; especially the Remex.

4048 *Hobart W. Geyer*

Mr. Watson: I move to strike out the answer as irresponsive.

XQ873. You personally had no conference with either myself or Mr. Waterman or Mr. Ferris or any other officer of the L. E. Waterman Company regarding these negotiations? A. No, the only conference was that Sunday at the factory.

XQ874. And they were simply looking over the factory at that time and did not tell you who they represented at all? A. Looking over the plant.

XQ875. When you had this correspondence with regard to the Wolfson Bros. advertisement there was not a word appearing
4049 in that correspondence about any other advertisements, was there, except the ones you paid for? A. You mean any letters?

XQ876. Yes? A. I don't think so, but they told me they were going to repeat the ad the following Saturday.

XQ877. Your attorney did not ask you anything about that did he? A. I guess it was forgotten.

XQ878. You heard the testimony of Mr. Asch that you paid for the advertisement which we produced, didn't you? A. Yes, we have not denied that. It was a misunderstanding.

XQ879. There is no misunderstanding that you paid for two advertisements is there? A. No, I understood when I paid for it that I was paying for something for the week following.

4050 XQ880. Is there anything in the correspondence to show that? A. No, the correspondence said that I would pay for an ad when it was done properly. That is my recollection of it.

XQ881. What do you do with the fountain pens of the L. E. Waterman Company which you repair; I mean do you take any in exchange or otherwise? A. Most of them we destroy. Some of them that are in pretty good shape we clean them up and sell them.

XQ882. Do you sell them under the same trade-mark as the Waterman Company put out, or do you sell them under your own name? A. We sell them just as they are, a job lot.

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XQ883. You sell them under the trade-mark of L. E. Waterman Company? A. They are mixed in with a lot of odd pens and we sell them for so many odd pens.

XQ884. Do you sell them at cut prices or the regular prices? A. Secondhand pens we sell at cut prices.

XQ885. Who have you sold those pens to recently? A. We have sold quite a number to an insurance man named Small. He takes most all that we have. I think he gives them away.

XQ886. You have sold them where you have furnished Waterman small boxes with them, have you not? A. No.

XQ887. You never have sold any and furnished small boxes with them? A. I don't think we ever had any of your boxes.

4052

XQ888. Did you ever know Mr. Martling to do it? A. I don't think so. He never did the selling himself.

XQ889. You don't know that Mr. Martling in answer to a request for Waterman Ideal Fountain Pens furnished the Waterman Ideal Fountain Pens in Waterman boxes do you? A. I don't think he did. I don't know.

XQ890. You don't know where Mr. Martling is do you? A. The last I knew he was with the National Cloak & Suit Company.

XQ891. When did you see him last? A. I think about two months ago.

Adjournment to Tuesday, April 18, 1911, at 10:30 A. M.

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4053

HOBART W. GEYER, resumes the stand.

*Cross-examination continued by Mr. Watson:*

XQ892. When did you first know about the decree of Judge Kellogg, entered September 3, 1898? A. I think I heard of it sometime within a year or two after Mr. Waterman came with us.

XQ893. You did not know anything about it when he first came with you? A. I think not.

XQ894. It was not discussed between you and Mr. Frazer and Mr. Waterman at the time you formed the partnership?

A. No; it may have been discussed between Mr. Frazer and Mr. Waterman but I don't remember discussing it.

XQ895. When did you first know that it came to the attention of Isaac E. Chapman and William L. Chapman? A. I don't know; I had very little to do with them until within three or four years.

XQ896. When did you first know that they knew about the decree? A. I don't know when they first knew of it. They did most of their business with Mr. Frazer.

XQ897. The question is very simple. When did you first know that they knew about it? A. Excuse me. It must have been some five or six years ago. I don't remember the exact
4055 date.

XQ898. Was it discussed at that time between you and the Chapmans? A. It had been mentioned. I don't think we ever discussed it very much.

XQ899. Does the present firm of A. A. Waterman & Co. admit being bound by that decree? A. Yes.

XQ900. Was this decree ever discussed between you and Mr. Frazer and Mr. Waterman as to whether the firm of A. A. Waterman & Co. of which you are a member were bound by that decree? A. It was always so understood and we always so instructed our salesmen about the selling of our goods, that we were selling them under that decree and they must be very particular to sell them as pens made by A. A. Waterman & Co.,
4056 so as not to have anybody think they were L. E. Waterman & Company goods.

XQ901. Don't you know that the decrees enjoining the calling of the pens made by A. A. Waterman & Co. as Waterman pens? A. No.

XQ902. You don't know that? A. No.

XQ903. I would like to have you look at a copy of the decree which is in evidence? A. It was something that never entered into the question because we never did call them Waterman pens; we always called them A. A. Waterman & Co. pens. That is one of the things we were very particular about.

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XQ904. I ask you if you did not know that the decree enjoined the calling of the A. A. Waterman & Co. pens "Waterman pens"? A. I don't remember it now. I shall have to read the decree.

XQ905. You don't recall anything about that part of the decree at all? A. I don't recollect just how the decree reads. We never did call our pens Waterman pens. It may have been on that account. It was on account of the decree that we were particular to call them A. A. Waterman & Co. pens.

XQ906. You know that dealers that handle A. A. Waterman & Co. pens call them Waterman pens don't you? A. I have never heard them call them that.

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XQ907. Did you ever see the sign in Mr. Carey's window which is in evidence here? A. No, I seldom go by Mr. Carey's at all.

XQ908. Did you know that there is a similar sign now being exposed in connection with your goods in the Hudson Terminal Building? A. I did not.

XQ909. This decree recites on its face that this action came on to be heard on the 7th day of March and subsequent days. I show you a copy of the decree. That appears in the first paragraph of the decree (handing witness the decree)? A. Yes.

XQ910. Why did you write to Bushnell and say that this judgment was obtained by default? A. That was my understanding. I never have seen the decree in full, to my recollection.

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XQ911. You have stated the same fact once or twice in the affidavit have you not? A. That was my understanding. Yes, I think I did. I stated it as I understood it.

XQ912. You were wrong about it weren't you? A. Evidently.

XQ913. Referring to some of these letters which you have produced here, one signed by the Bruhn Drug Company dated November 15, 1910; does that refer to a Waterman Ideal Fountain pen? A. This refers to a No. 13 Ideal.

4060 *Hobart W. Geyer*

XQ914. Do you think that letter shows any confusion in the mind of the writer regarding the manufacture of that pen? A. Yes, we admit that there is confusion.

XQ915. You have a good deal of that same kind of thing all the time don't you? A. We have considerable.

XQ916. I show you the next letter, E. A. Brown & Company, St. Paul, Minn., March 29th, 1910. Does that refer to a Waterman Ideal Fountain Pen? A. Yes, it refers to a No. 2 Ideal, covered with silver. I have forgotten what the catalogue number is.

XQ917. Will you please look at the letter of H. C. Bostwick & Co., January 12, 1911; do you claim that letter was in-
4061 tended to be addressed to you? A. It evidently came to us. I think they are customers of ours. They are dealers.

XQ918. Do you claim letters addressed to the Waterman Pen Company, New York? A. If it comes addressed to us at 22 Thames Street, New York. There is no such concern as the Waterman Pen Company.

XQ919. Do you claim mail and orders which come addressed to the Waterman Pen Co. when it is addressed to the Waterman Pen Company, New York? A. If it is addressed to us at 22 Thames Street. If it does not have our street number on it, we as a general thing do not open it. If we open it and find it belongs to the Ideal we send it up to them.

XQ920. Do you ever open mail which is addressed to the
4062 Waterman Ideal Fountain Pen Company? A. No.

XQ921. Never have done that? A. I don't remember ever having done it. If it has been done it has been done unintentionally.

XQ922. Will you please look at the letter from Ball, Book & Novelty Company, dated February 11, 1911; the writer says he is enclosing one pen; and the name is "Adma" (or Adams). Was that the name of the owner as you understand it? A. Yes, that was the name that was put on the envelope just to distinguish it.

XQ923. Please turn to the letter signed by Wehrly Bros., Hartford City, August 23, 1910. Do you think that shows any

confusion in the mind of the sender as to who made the pen which he sent? A. Yes, we admit confusion.

XQ924. Do you claim mail and orders and business which is addressed to the Modern Ideal Pen Company, New York? A. If it is addressed to us at 22 Thames Street.

XQ925. Do you claim that anything having the word Modern, irrespective of the fact that it contained the word Ideal, belongs to you? A. If it has our street address on it.

XQ926. Otherwise not? A. Otherwise not. If we open a letter and find it should have gone to the L. E. Waterman Company we send it up to them.

XQ927. The next letter, which is signed by the Southern Optical Company, dated December 17, 1910, also shows confusion in the mind of the sender, does it not, as to who made the pen which is enclosed? A. He sent an Ideal pen to us. 4064

XQ928. Does he not say that he is sending one of your fountain pens? A. Yes.

XQ929. Does that show any confusion in the mind of the writer? A. Yes.

XQ930. Do you think that the letter signed E. L. Gow, dated September 5, 1905, shows any confusion as to who made the pen that he is inquiring about? A. I don't know. I presume he was confused. He wrote to us to suggest a remedy for an Ideal fountain pen that leaks. It may be that he had one of our pens and ours was so good that he wanted to know how to get an Ideal to do the same thing. I have not any idea what his thoughts were in the matter. 4065

XQ931. How about the letter signed by K. M. Dickson, November 22, 1910. Does that show any confusion? A. I don't know. He addresses us plainly at 22 Thames Street; as A. A. Waterman & Co., 22 Thames Street and he asks about an Ideal pen.

XQ932. "One of your Ideal pens"? A. Yes, "One of your Ideal pens."

XQ933. Does that show any confusion? A. I think so, perhaps.

XQ934. You are not prepared to say positively that shows confusion? A. I don't know. We admit that there is confusion.

XQ935. I ask you if you are prepared to say positively that it does not show confusion? A. I think so perhaps.

XQ936. You are not perpared to say positively that it does; it is only "perhaps"? A. That is a question of judgment entirely.

XQ937. I ask you if you are prepared to say that it does not positively show confusion? A. I say I think it does but I can not state positively.

4067 XQ938. When you wrote these letters to the Standard Drug Company and to Mr. Bushnell you sent him copies of the decree of Judge Kellogg entered September 3, 1898, did you? A. I would have to read the letters to see. I don't remember now. Unless it is mentioned in the letter I evidently did not. I think I sent a copy of the decree to Mr. Teller. I would have to go all through the correspondence.

XQ939. Do you recall whether you sent Mr. Bushnell at the time you corresponded with him regarding the action against the Standard Drug Company, or to the Standard Drug Company, a copy of Judge Kellogg's decree? A. No, I did not send Mr. Bushnell anything but this letter. I don't think there was any enclosure in it of any kind.

XQ940. Did you send him but one letter? A. That is all.

4068 XQ941. You are prepared to state positively that you only sent him one letter? A. Yes.

XQ942. In connection with this business? A. Yes.

XQ943. And you did not send him a copy of Judge Kellogg's decree? A. No.

XQ944. Did you send a copy of the decree to the Standard Drug Company in connection with that litigation? A. I don't think so. I don't remember. If I sent it the correspondence would show.

XQ945. Did you send a copy of the decree to Mr. Teller? A. I don't think so.

XQ946. Or to his attorney, Mr. Chamberlin? A. No, I did not send anything to Mr. Chamberlin.

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XQ947. Never wrote to Mr. Chamberlin? A. No, I wrote to Mr. Teller to go and see Mr. Chamberlin. I never wrote Mr. Chamberlin a word.

XQ948. Did you employ Mr. Chamberlin to defend Mr. Teller in the action? A. I wrote Mr. Teller to employ him or the firm that he is a member of—to employ the firm that Mr. Chamberlin was a member of. I have forgotten the name now.

XQ949. Did you agree to pay their fees? A. Yes.

XQ950. When did you employ him? A. In my letter to Mr. Teller after the L. E. Waterman Company started this suit for contempt of Court against him. As he had not been enjoined from selling our goods we thought it was no more than right that we should protect him.

4070

XQ951. You employed Mr. H. W. Hollender of Washington to defend the interests of the Modern Pen Company and A. A. Waterman & Co. in the action of the L. E. Waterman Company against John Saadi in Washington did you not? A. No, sir, I did not.

XQ952. Did anybody connected with the defendant or the A. A. Waterman & Co. employ Mr. Hollender for the purpose I have stated? A. The firm of A. A. Waterman & Co. made some kind of a tentative agreement with him I think it was.

XQ953. You don't know that they retained them to defend their interests in that litigation? A I have forgotten just what that was. The letter I think is in evidence showing just what they did.

4071

XQ954. Did you pay him anything? A. We paid him $100, yes.

XQ955. Did that come out of the treasury of the Modern Pen Company? A. I think that was paid by A. A. Waterman & Co.

XQ956. You testified that the Modern Pen Company never paid any dividends, is that correct? A. Yes. I did not testify that it had not earned any though.

XQ957. Has there been any distribution of profits at any time among the firm of A. A. Waterman & Co.? A. Yes, I think so. The profits have been turned over to them, so I presume they divided them among themselves.

XQ958. Did you ever know that A. A. Waterman got any profits from the firm of A. A. Waterman & Co. composed of himself and the Chapmans? A. They get their profits. I don't know what they do with them.

XQ959. Do you know whether A. A. Waterman ever got any profits from that firm? A. I don't know.

XQ960. A. A. Waterman severed his connection with that firm, as you have stated in your affidavit, on July 1, 1906? A. Yes.

XQ961. He has had no connection with the concern or its business since. A. No, sir, I don't think he has had any connection with them at all since then.

4073 XQ962. Do you remember receiving back a stock of goods from E. J. McPulim, 2087 Amsterdam Avenue, New York City which had been sold him and which he claimed were sold him under false representation? A. I don't remember the account at all, or the name.

XQ963. Do you sell Aloe's of St. Louis, Mo.? A. No, we have not sold them since Mr. Waterman withdrew from the firm.

XQ964. These pens that they carry are sold from Chicago are they now? A. I don't know; I don't know what they carry.

XQ965. You have not sold Aloe's of St. Louis, since July 1, 1906? A. No, sir, we would like to sell him but we have not

4074 been able to.

XQ966. Is it possible they may buy your goods from some jobber? A. Yes, a lot of jobbers are handling our goods. There is no reason why they could not or should not.

XQ967. I call your attention to an advertisement that appeared in the St. Louis Times of December 1, 1910, and ask you if you furnished the cut which appears in that advertisement (showing witness paper)? A. I don't know. If it was printed it must have been done years ago. We have not sent him anything since Mr. Waterman withdrew.

XQ968. If that was an advertisement of your pens would you consider it a fair advertisement?

4075

Objected to as a conclusion for the Court.

A. No, we insist on our customers advertising our pens as A. A. Waterman & Co. pens and not as Waterman's.

The advertisement shown the witness is offered in evidence and marked Plaintiff's Exhibit No. 129.

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial and in no way connected with this defendant.

Mr. Watson: Is there any objection on the ground that all of this paper is not produced?

Mr. Bacon: No.

4076

XQ969. You were going to advise us when the Modern Pen Company was incorporated and when it began business? A. The Modern Pen Company was incorporated the 17th of June, 1905.

XQ970. When did the Modern Pen Company begin business? A. I think the 17th of June when those papers came back.

XQ971. That is when the company was organized and the officers elected? A. I thought this was the date that you wanted and that is the one I looked up. I did not look any further, so I have not any other dates.

XQ972. How does it happen that you sold these Royal Ideal fountain pens to Saadi at a loss? A. I did not sell them at a loss. When I figured them I figured what the whole thing would cost and until I analyzed the thing as to the price I was selling the gold pens at I did not realize that the holders would be sold at a loss. What I lost on the holders I made up on the gold pens.

4077

XQ973. They were completed fountain pens were they not? A. Yes.

XQ974. Why do you find it necessary to separate? A. I was asked by my counsel to find out just how they figured out for the holders and the pens, as the Royal Ideal imprint was on the holders only.

XQ975. It was a complete fountain pen and very frequently the imprint is only on the holder in fountain pens is it not? A.

4078 *Hobart W. Geyer*

No, most everybody has the name on the pen as well as on the holder.

XQ976. Don't you manufacture goods which you imprint only on the holder? A. Yes, very cheap pens—cheap gold pens and a blown holder. That is the only thing that we put out that way.

XQ977. This Exhibit No. 14, the Royal Ideal pen; do you know that this pen retails at $1.50? A. I have not any idea what it retails for.

XQ978. And you sold it for $6 a dozen? A. Yes.

XQ979. What is the inspection that you put on your goods before they leave the factory? A. They are inspected as to the
4079 pen and feed, being properly adjusted, being fitted into the section properly, as to the section and cap fitting just right; that is, the section fitting the barrel and the cap fitting both the barrel and the section; as to the pen being properly set in and smoothed properly and properly adjusted.

XQ980. You test them as to whether the joints are tight or not? A. We do.

XQ981. In what way? A. We have a machine on the same principle as a hydraulic pump. We put the holders under about six pounds pressure. If we found that they would stand six pounds pressure without leaking at the joints they were very tight.

XQ982. What test do you put them to as to whether the
4080 feed will operate or not? A. We do not test the feed. The feeds are all made right, and the feeds are all inspected to see that they are all the same, so that that is not necessary. This other test, as to the section end is something we have been doing eight or nine months I think.

XQ983. Never did it before that time? A. No, we found that holders did get out that were not perfect and we devised this machine and had it made for us to overcome that difficulty.

XQ984. About eight or nine months ago you started that? A. Yes, about that time.

4081

XQ985. Prior to that you made no test of the joints? A. No.

XQ986. You do not fill your pens generally with ink before they are sent out? A. We do not.

XQ987. And you do not know except theoretically whether they are right or not? A. Yes, we do know from experience that they do write.

XQ988. That is purely theoretical? A. When you are putting out 600 or 800 pens a day and they work right when they get to the consumer there is not much theory about it.

Mr. Watson: I move to strike out the answer as irresponsive and repeat the question.

4082

XQ989. (Repeated.) That is purely theoretical? A. No, that is our experience.

XQ990. What proportion of your total output are end joint pens? A. About 50 per cent I should say.

XQ991. And the rest of them are divided among the different styles you make, safety pens, middle joint pens and self-filler pens? A. Yes.

XQ992. Do you know a concern named Tiffany Pen Company? A. I never heard of it. I heard that question the other day—asked one of our salesmen. Some two or three or four years ago there was a letter came to us for some fountain pen concern in our building but I have forgotten what the name was. I simply returned it to the post office and never opened it.

4083

XQ993. Do you sell any concern of the name of Tiffany Pen Company? A. No, I never heard of the name and I am not sure that this letter was addressed to the Tiffany Company.

XQ994. When you got these gold pens back from Saadi didn't you supply other gold pens in their place? A. We supplied gold pens imprinted "Warranted 14 Karat."

XQ995. Why did you deduct it from the cost then? You made your profit on the other pens just the same didn't you? A. That was a different sale entirely.

4084 *Hobart W. Geyer*

XQ996. Didn't he simply send them in for exchange to get other pens; was not that what he testified? A. I presume that is what he wanted.

XQ997. Didn't he write that he sent in those pens for exchange? A. Yes, but those others did not have our name on them; there was nothing but the imprint warranted 14 karat.

XQ998. Don't you make it a practice to sell to parties known as the travelling show people, that are called in the trade fountain pen fakirs, that sell pens around the country here and there? A. No, we sell some of them.

XQ999. Don't you sell them on consignment? A. No.

4085 XQ1000. To make certain about matters that I may want to ask other witnesses about, I show you a fountain pen which is marked "W. N. Lancaster Idea," enclosed in a star, 1893, Baltimore, Md., U. S. A., and ask you if you have at any time made fountain pens and stamped them with word Idea, enclosed in a star similar to the marking on the pen that I now show you? A. Mr. Lancaster brought a wheel with an imprint and wanted me to imprint some holders for him with it and I refused.

XQ1001. You are familiar with the imprint that I have just shown you on fountain pens? A. I never saw it but once, when he brought the wheel to me.

XQ1002. You never saw it on fountain pens? A. No.

4086 The pen shown the witness is offered for identification and marked Plaintiff's Exhibit 140.

XQ1003. Do you know who makes those pens that I have shown you like Exhibit 140? A. No, sir, I do not.

XQ1004. Why did you object to making pens and stamping them like Plaintiff's Exhibit 140? A. This was after I had imprinted those pens Royal Ideal and this suit against Saadi had started and I certainly will not imprint anything that has the slightest tinge of "Ideal."

XQ1005. You thought that the stamping Idea was too close to Ideal; is that the reason you refused? A. I think it was gotten up to take advantage of the word Ideal.

4087

XQ1006. You think that marking was likely to cause the pen to be mistaken for Waterman's Ideal? A. I don't think so. I don't know what his idea was about it but I know that I will not imprint anything that had a tinge of Ideal to it.

XQ1007. You don't think then that there is any chance of mistaking that pen for a Waterman Ideal by reason of the marking? A. I know I would not. I don't know whether somebody else would or not.

XQ1008. Was not that the reason that you refused to make them for Mr. Lancaster, because you thought they would be mistaken for Ideals? A. No.

XQ1009. That that marking would be considered a simulation or imitation of the plaintiff's trade-mark? A. I thought 4088
it was intended for an imitation or a simulation, yes.

XQ1010. When you made the affidavit in support of the motion for an injunction in the case of Chapman against the L. E. Waterman Company you had then heard of the decision of Judge Barnard on the motion for preliminary injunction in the Waterman-Saadi case had you not? A. I think so but I am not sure.

XQ1011. The making of the Royal Ideal pen for Saadi was fresh in your mind at this time was it not? A. Yes.

XQ1012. And the complaint which was sent to you by Mr. Saadi soon after it was served upon him in December, 1909, showed that the plaintiff complained of the Royal Ideal pens did it not? A. I think I saw that complaint, but I am not sure 4089
now, at that time.

XQ1013. Didn't you make affidavit that you took that complaint to your counsel? A copy of that complaint was sent to you by Mr. Saadi soon after it was served on him was it not? A. I don't remember. I don't think so.

XQ1014. I show you a letter of John Saadi, dated December 7, 1909, and ask you if he did not tell you that the Waterman Company was complaining of the Royal Ideal pens markings on the pens you had made and furnished him? A. Yes.

XQ1015. This letter is part of Exhibit 20? A. Yes, the letter of December 7th, 1909, states that.

XQ1016. Did he about that time send you a copy of the complaint? A. No, sir.

XQ1017. Did Isaac E. Chapman consult with you at all in reference to these litigations in Cleveland and Washington? A. I think he did about the Washington litigation but not about the Cleveland.

XQ1018. Do you recall any of the facts contained in his affidavit verified August 10th, 1910? This was in the Cleveland suit. A. Yes, this one from Saadi we did not receive though until the latter part of January or February, 1909, according to my recollection.

4091 XQ1019. Were not those complaints both before the Chapman action started? A. I don't remember now.

XQ1020. The letter which I have shown you of December 7, 1909, brought clearly to your mind the complaint which the Waterman Company was making against the marking of pens with the words "Royal Ideal Pens" on them did it not? A. That is all that he wrote me, that they were trying to serve him with an injunction against his selling Royal Ideal pens.

XQ1021. You knew that you made those pens, didn't you? A. I certainly did.

XQ1022. And you knew that when you made the affidavit of February 21, 1910, which I have shown you? A. Yes.

XQ1023. And you knew it when you verified the answer in the action at bar, didn't you? A. Yes.

4092 XQ1024. And when you verified the answer in the action at bar you knew all about the claims of the L. E. Waterman Company? A. Yes.

XQ1025. Was it true that the defendant, the Modern Pen Company, has either directly or indirectly violated any valid trade-mark or trade name of the complainant? A. That was my understanding at the time. I supposed it to be trade-mark, Royal Ideal, issued by the United States Patent Office. I did not know when we imprinted them that way that we were doing anything that we had not a perfect right to do.

XQ1026. You know now that that was not a trade-mark don't you? A. No. You said so the other day.

4093

XQ1027. You don't know anything about it? A. No, sir.

XQ1028. You still think it is a trade-mark? A. I don't know what it is.

XQ1029. Returning to the Wolfson correspondence; in that letter of December 18, 1909, you write "Your letter of the 17th inst. received and we would be very much pleased to stand one-half of the cost of the ad as per your former request." There is no indication in there is there that you intended to have paid for any other advertisement than the one that was called to your attention in the letter of the 17th? A. That was my intent. That letter came in the very busiest part of the year and they had stated in their letter of the 17th that I was answering, that if we preferred they would advertise the goods as A. A. Waterman & Co. pens, so I had nothing to do but take it for granted that that was what they intended to do.

4094

XQ1030. You did as matter of fact pay for the advertisements which were presented to you in the letter of February 17th, 1909, didn't you? A. So I found out within a couple of months, through this dispute.

XQ1031. Did you ever furnish cuts to the Lazarus Jewelry Store? A. No, that must have been an old cut that I had eight or ten years ago. We have not put out a cut of that sort for years.

XQ1032. Do you disclaim that cut? A. That is a cut of an old middle joint pen that was made years ago, before it was improved upon.

4095

XQ1033. You disclaim that cut? A. Yes, the Modern Pen Company never sent out a cut like that. They never had one.

XQ1034. Did A. A. Waterman & Co. ever send out a cut like that? A. Not the present firm of A. A. Waterman & Co.

XQ1035. You do not stand responsible for what the A. A. Waterman & Company did before the present firm was organized do you? A. This was sent out by the firm of A. A. Waterman & Co. of which Mr. Frazer, Mr. Waterman and myself were members.

XQ1036. The present firm of A. A. Waterman & Co. does not stand responsible for what that firm did, does it? A. They stood responsible for anything that they were responsible for.

4096 *Hobart W. Geyer*

XQ1037. If the firm of A. A. Waterman & Co., of which you are a member, furnished the electrotype contained in the Lazarus Jewelry Store advertisement, which I have shown you, which they have been using improperly, you do not consider the present defendant or the present firm of A. A. Waterman & Co. responsible for furnishing that cut do you? A. The Modern Pen Company have assumed all the liabilities of the old firm of A. A. Waterman & Co.

XQ1038. The Modern Pen Company has assumed all the liabilities of the old firm of A. A. Waterman & Co? A. Yes, that is my recollection and understanding of it.

4097 Mr. Bacon: I wish it to appear on the record that the cut referred to bears the imprint "A. A. Waterman & Co. Modern" and nothing else.

XQ1039. The advertisement contains a cut of a fountain pen and the cut of the fountain pen bears the words "A. A. Waterman & Company, Modern" does it not? A. Yes.

XQ1040. And that is the cut that we are both referring to when we are asking and answering the last few questions? A. The first question was if we had sent that out and I stated that we had not because we have not had any of those cuts since the reorganization. We have sent out similar cuts but not that particular one.

XQ1041. Does the Modern Pen Company stand responsible
4098 for all of the acts of the A. A. Waterman & Co. of which you were a member?

Mr. Bacon: Objected to as this witness is not a member of the present firm of A. A. Waterman & Co.

A. There has nothing come up that I know of. It would have to come up before the Board of Directors, if any such incident did occur, and be passed upon by them.

XQ1042. There has never a case come up where the responsibility of A. A. Waterman & Co. for anything that the firm of A. A. Waterman & Co. of which you were a member did, come into question? A. If there were any pens sent out that the customer wanted to return or exchange for credit, the present cor-

poration of the Modern Pen Company took them back and gave them credit or exchanged them or did whatever was necessary. I don't know of anything else that has happened that has called for any action. 4099

XQ1043. Have you found out whether the Modern Pen Company is responsible or not for the judgment against the former firm of A. A. Waterman & Co.? A. I don't think they are.

XQ1044. Have you found out anything about it one way or the other since I last questioned you? A. No.

XQ1045. Have you asked anybody? A. No.

XQ1046. Will you please give us a list of the people to whom you have sold Waterman Ideal Fountain Pens? A. The only one I remember is the man named Small that I spoke to you about the other day. 4100

XQ1047. Where is his place of business? A. I think it is on Broad Street but he comes into the office and buys the pens in there.

XQ1048. When did you sell him? A. I don't know. The clerks waited on him.

XQ1049. Do you remember selling some of these pens to a man named D. J. Handler? A. No. Handler has not bought anything of us for five years, it seems to me, and I never sold him myself. I don't know what he bought.

XQ1050. You had nothing to do with that transaction? A. I don't remember anything about it except that he was one of the men who skipped out owing us some money which we never have been able to collect. We cannot locate the man at all. 4101

XQ1051. Do you consider the advertisement of the Lazarus Jewelry Store which I now show you a fair advertisement (showing witness a paper)? A. It is certainly not a fair advertisement of our pen. I think it is a better ad for the Ideal pen than ours although it does not say anything about Ideal.

XQ1052. The words "Waterman's Fountain Pen" in the trade generally means L. E. Waterman Company goods don't they? A. I think so generally with the trade.

XQ1053. Did you have anything to do with paying for that advertisement of the Lazarus Jewelry Store? A. No.

XQ1054. Did you have anything to do with making it up? A. I never saw it. I never heard of it until it was put in here as an exhibit.

XQ1055. Did you ever pay for any advertising matter either directly or indirectly put out by Warwick Bros. & Rutter? A. No.

XQ1056. Never allowed them any additional discount for its advertising? A. No. We allowed them simply discounts additional towards helping to pay for show cases instead of shipping them from here. That is the only thing.

XQ1057. Do you know a concern by the name of Bernheimer Bros. of Baltimore? A. We sold them one bill of goods.

4103 XQ1058. When did you sell them? A. I think it was within two or three months, to my recollection.

XQ1059. You furnished them a showcase with a bill of goods? A. Yes, it was one of the Waterman Ideal showcases that had got into our place. It probably came from the manufacturer along with ours and when it reached there they notified us that it was imprinted Waterman's Ideal instead of ours and we had all the expense of bringing it back and sent them a new one to replace it.

XQ1060. The reason it happened to go back was because it got broken in shipping, was it not? A. They notified us it was broken but it was imprinted Waterman's Ideal. That is the best information we had on the subject.

4104 XQ1061. Do you think you would ever have heard about it if it had not been broken? A. That I don't know. I presume we would. The same people as I understand it, makes show cases for Waterman's Ideal that makes them for us and evidently it must have got mixed up in their place in shipping. The same thing has happened to us with Mabie, Todd & Bard; the show cases got mixed in shipment.

XQ1062. How long has your present show case man been making show cases for you? A. Lately about two years.

XQ1063. That same concern had been making them for the Waterman Company for some years prior hadn't they? A. That I don't know. They used to make them for us eight or ten years ago and then we dropped them for some reason, I have

4105

forgotten what it was, and came back to them about two years ago. I might explain that these show cases come to us all packed ready for shipping out and we do not open them at our place; we simply put the customer's address on and ship them to them without ever opening them.

Recess.

The advertisement shown the witness of Lazarus Jewelry Store is offered in evidence and marked Plaintiff's Exhibit 141.

Objected to as incompetent, irrelevant and immaterial and not connected in any way with the defendant.

4106

XQ1064. The concern Lazarus Jewelry Company mentioned in the advertisement Plaintiff's Exhibit 141 is one of your customers and buys your pens does it not? A. There is a man named Lazarus; I presume that is the one that refers to.

XQ1065. How recently has he been buying pens? A. Not within a year or so. I don't think he has bought anything within the last year although he may possibly, a small bill.

Mr. Bacon: This is objected to as there is nothing to indicate when this advertisement was issued or where.

XQ1066. Where is Lazarus located? A. Somewhere in Georgia. I don't remember the town now.

XQ1067. 513 Cherry Street, Macon, Ga., is it not? A. I think it is Macon, yes.

4107

XQ1068. Did you not see a copy of this circular in the latter part of 1909? A. I think not. I think I saw the exhibit that you had. I don't think I saw the original. That is my recollection. I have seen it in the printed record or in the answer, or something.

XQ1069. Are you familiar with the advertisement of G. Cabrini, a copy of which I am showing you (showing witness a paper)? A. No, I am not. I think I saw one of his ads once but it was not anything like this one.

XQ1070. You have not seen a copy of any newspaper which contained an advertisement like the one I now show you? A.

4108 *Hobart W. Geyer*

No, I don't think so. I don't remember ever having seen that ad.

Mr. Watson: Counsel for plaintiff asks counsel for defendant if he will admit that advertisement similar to the one now shown in the copy were published by G. Cabrini of Milan, Italy, and other places in several European newspapers?

Mr. Bacon: No, we know nothing about it except what was in the printed case.

XQ1071. Did you ever allow or pay anything to Cabrini directly or indirectly for advertising? A. No, the only thing is
4109 we have furnished him with placards and circulars that we had printed here. These were printed in English and were our regular placards, the same as we issued to our dealers in this country.

XQ1072. If you find the name Waterman such a handicap as you state why do you use it?

Mr. Bacon: Objected to as immaterial and not founded upon fact.

A. We use it because it belongs to us.

XQ1073. It is a fact that you find it a great handicap to you inasmuch as your goods are so much superior to the goods of the L. E. Waterman Company; is that a fact? A. I never made any such statement.

4110 XQ1074. Is it a fact? A. That we have not proved out. I cannot tell you what the fact is in that respect.

XQ1075. Was Ailman & Son of Boston authorized to receive mail addressed to you at Boston? A. I never heard of it until Miss Dooly so testified yesterday but I understand that some seven or eight years ago while Mr. Waterman was with us he did write such an authorization and that the present company being ignorant of it has never countermanded it and do not know anything about it.

XQ1076. Is it true as she stated that she has on various occasions sent you letters which she has opened? A. I find out that some did come to our repair department. They never

reached me so I did not know anything about it. They came in with repairs.

XQ1077. Have you ever been to the Day factory at Seymour? A. I have not.

XQ1078. You know nothing about the factory except from hearsay do you? A. That is all.

XQ1079. You don't know anything about what they manufacture there except from hearsay? A. That is all.

XQ1080. Do you know whether A. A. Waterman is connected with a concern in Chicago which you were inquired about on your direct-examination? A. I do not know but I understand he is not connected at all with them now.

XQ1081. He has not been connected with them for some time; 4112
is that your understanding? A. I think close for two years.

XQ1082. If you wanted to differentiate your goods from those of the L. E. Waterman Company would it not be easy for you to do so by omitting the use of the name Waterman?

Objected to as immaterial.

A. We could do it in any quantity of ways.

XQ1038. As a matter of fact you admit there is a lot of confusion between the goods of the L. E. Waterman Company and those put out by A. A. Waterman & Co., do you not? A. Yes. The bulk of the confusion that we complain of is the fact that L. E. Waterman Company's representatives go around talking to the trade that there is no such concern as A. A. Waterman 4113
& Co. and that they have no right to sell our goods.

XQ1084. Do you know of any such representation being made? A. I know I have had from 150 to 250 reports from my salesmen and others.

XQ1085. When did you have those reports? A. They keep coming in continually. There is apparently no break in them.

XQ1086. None of those reports have been put in evidence have they? A. No, I think not.

XQ1087. The letter written to Hammell that you complained so much about, referred the party to the Modern Pen Company did it not, 22 Thames Street? A. I think so; I am not sure; I did not read that letter.

XQ1088. I show you a copy of the letter. A. There is nothing in the written letter about the Modern Pen Company. That letter states that there was no such firm as A. A. Waterman & Co., New York, and refers him to the Modern Pen Company.

XQ1089. And the Modern Pen Company is the concern which comes in contact with the outside public in selling all of the products of the A. A. Waterman & Co., is it not? A. Yes.

XQ1090. And if you had written to Mr. Hammell in answer to his letter you would have written to him on the Modern Pen Company paper wouldn't you? A. Yes, which distinctly states
4115 that we are the sole selling agents for A. A. Waterman & Co.

XQ1091. Notwithstanding the fact that you find the name Waterman is such a handicap you make it a point don't you to use the name Waterman on all of your advertising matter, on your letterheads and billheads and on your invoices and all your literature? A. Wherein is the fact stated that it is a handicap? I don't remember any such fact having been stated or any such claim made.

XQ1092. You don't think it is a handicap then? A. You are asking about the fact. I state that I have not heard any such fact mentioned.

XQ1093. You have never heard your counsel say that they were injured by the fact that the name was so similar to ours did you? A. No, he stated that we were injured by the con-
4116 fusion which was created.

XQ1094. That confusion came from the fact that the name and marking of the goods were so similar did it not? A. The marking is not similar. There is no similarity to the marking at all. The only similarity is that they both have the name Waterman.

XQ1095. What causes the confusion between the goods? A. The same that causes the confusion between the Bakers Cocoa and the three Fabers lead pencils; simply because there is a family name and more than one party of the same name making similar goods.

XQ1069. The question is repeated. A. There is no confusion between the goods.

4117

XQ1097. There is no confusion between the goods? A. None that I know of.

XQ1098. You testified that there was a lot of confusion between the goods? A. No, the confusion is in the people who have the goods.

XQ1099. I call your attention again to some of the letters that I called your attention to this morning; for instance the first one, the Bruhn Drug Company, dated November 15th, 1910. I ask you if there is not there shown a confusion between the goods of the L. E. Waterman Company and those put on the market by A. A. Waterman & Company? A. The Bruhn Drug Company was confused, the goods were not confused.

4118

XQ1100. Didn't they confuse between the goods? A. The goods have no intelligence; they cannot be confused.

XQ1101. Wasn't there confusion between the goods in the minds of the Bruhn Drug Company? A. The confusion was in the minds of the Bruhn Drug Company as to the maker of the goods.

XQ1102. And when you say there has been no confusion between the goods that is your explanation, is it? A. That is the explanation I made.

XQ1103. Is that your explanation for your statement that there is no confusion between the goods? A. I don't know any other that I could make.

4119

XQ1104. And the same explanation you make in regard to the letter of the Southern Optical Company of December 17, 1910? A. I don't know what caused that confusion I am sure.

XQ1105. And in your experience you have never found any confusion resulting from similarity in the marking of the goods? A. No, personally I have not run across anybody that has been mistaken in it at all.

XQ1106. You never have seen any confusion in the trade? A. Not personally, no.

XQ1107. Why are you able to say then that there has been considerable or "quite extended," as you put it, confusion in the trade or in the minds of the public? A. From the letters that we get and from the reports that I get.

4120

XQ1108. Does not that confusion come because of the similarity of the names of the concerns and the similarity in the marking of the goods? A. Some part of it is confusion and some of it carelessness. Within two weeks I got a letter from Aiken-Lambert Co., addressed to A. A. Waterman Co., signed by one of the officers, I think it was. They certainly ought to know the difference between A. A. Waterman & Co. and A. A. Waterman Co. I don't think that is confusion; I think it is carelessness. A lot of these others are carelessness in my opinion.

XQ1109. If there is so much confusion and you are injured so much as you and your counsel state why do you use the name

4121

Waterman? A. As I stated before, it belongs to us.

XQ1110. Is that your only reason? A. I don't know what the reasons of all of the directors in the Modern Pen Company are but that is one of my reasons. I am there to carry out the instructions of the President and the Board of Directors.

XQ1111. On what ground do you base your right to the name A. A. Waterman & Co.?

Objected to as immaterial.

A. On the grounds of the copartnership articles.

XQ1112. Between A. A. Waterman and the Chapmans? A. The copartnership articles; the common law and the decree of September 3, 1898.

4122

XQ1113. How do you claim any right under the decree of September 3, 1898, of Judge Kellogg? A. I am not a lawyer. I understand that it comes down to the right as privies or successors of the old concern.

XQ1114. You have no personal knowledge of the concern of Waterman & Gibson? A. No.

XQ1115. You never knew Mr. Gibson did you? A. I have no recollection of ever having met him at all.

XQ116. Do you know of any assignment that has ever been made by the firm of Waterman & Gibson of its trade name or good will? A. I do not know of any, no.

XQ1117. You never saw any did you? A. Not to my recollection; not to my knowledge.

4123

XQ1118. You never saw any transfer of the trade name and good will of the firm of A. A. Waterman & Co. of which you were a member to the present partnership of A. A. Waterman & Company did you? A. I don't remember having seen any.

XQ119. You never joined in making any such transfer did you? A. I don't think so. I don't remember though.

Mr. Watson: Counsel for complainant states that he has called upon the defendant to produce all of the correspondence of which he has produced a part, passing between Watson & Raymond, or Samuel S. Watson, or Walter B. Raymond, on the one side and Isaac E. Chapman or William L. Chapman on the other side concerning an alleged attempt to buy and sell the defendant's concern; that plaintiff's counsel has produced a copy of a letter dated April 18, 1907, by Watson & Raymond to Isaac E. Chapman and asks that the same be included among the correspondence.

4124

Mr. Bacon: Defendant's counsel says that he has never been able to find the receipt of any such letter or of any correspondence on that date but that another search will be made and if any is found it will be produced.

Mr. Watson: Plaintiff asks that a copy of the letter which he has produced be included among the correspondence as part of the Exhibit A-45.

4125

XQ1120. Did you pay any part of the expense of the advertisement Exhibit 24, which I show you (handing witness the paper)? A. No, sir.

XQ1121. Did you see the advertisement before it was issued? A. No.

XQ1122. Did you see it after it was issued? A. I don't remember ever having seen any of their ads.

XQ1123. Did you pay at any time directly or indirectly any part of the expense of Exhibit 23 or 24? A. No, sir, I never paid or allowed Warwick Bros. & Rutter anything for advertising. The only allowance we ever made them was an extra discount towards the cost of show cases which they preferred to

have made in Canada to save the duty rather than have our cases sent to them from here.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ1124. Let us clear up the mystery of the friction attendant upon the reorganization. I will ask you first who were the managers of the Frazer & Geyer Company in the early stages of its history? A. Mr. Frazer and myself.

RDQ1125. You were joint managers? A. Yes.

RDQ1126. During that time did they make money?

4127 Objected to as immaterial.

A. Yes.

RDQ1127. 25 or 30 per cent on their stock?

Same objection.

A. We made 10 per cent on the preferred stock and from 25 to 45 per cent on the common.

RDQ1128. You had substantially no acquaintance with the Chapmans when they brought in their money? A. No, sir.

RDQ1129. When was this pooling agreement entered into?

Mr. Watson: Objected to as there is no evidence anywhere that at any time there was a pooling agreement.

4128 A. You mean A. A. Waterman & Co. and the Frazer Geyer Company?

RDQ1130. I mean the pooling agreement between Frazer, I. E. Chapman and his friends?

Mr. Watson: Objected to as not proper re-direct examination.

A. I think it was in the summer of 1902, early in 1902. I have forgotten just the date.

Mr. Watson: I move to strike out the answer as immaterial and irrelevant to any issue in the case, and not proper re-direct examination.

4129

RDQ1131. Did this pooling agreement comprise Mr. Frazer, Mr. I. E. Chapman and all of his friends?

Same objections.

A. Yes.

RDQ1132. And that related to the common stock only?

Same objections.

A. Yes.

RDQ1133. And the common stock only had voting power?

Same objection.

A. That is right.

4130

RDQ1134. When this pooling agreement was entered into were you deposed as manager?

Mr. Watson: Objected to as immaterial and not proper re-direct examination.

A. Yes.

RDQ1135. Then who became the sole manager? A. Mr. Frazer.

RDQ1136. And from that time on did the company make or lose money?

Mr. Watson: Objected to as immaterial and not proper re-direct examination.

4131

A. Soon after that they began to lose money.

RDQ1137. Is it a fact that in the early part of the year 1905 the company had lost a great deal of money, and the management was in the hands of Mr. Frazer only and yet on account of this pooling agreement it could not be taken from his hands?

Same objections.

A. Yes.

RDQ1138. Is it also a fact that he owned the merest trifle of the stock and substantially all of his stock was hypothecated to Mr. Chapman for a loan?

Mr. Watson: Same objection and as immaterial and not proper re-direct examination.

A. Yes.

RDQ1139. And notwithstanding the fact that his management had been disastrous and that he owned substantially no stock, nevertheless, it was impossible, under the terms of the pooling agreement, to get rid of him?

Mr. Watson: Same objection, and as leading.

A. Yes.

RDQ1140. This being the condition of affairs, was there a
4133 stockholders meeting called in April?

Mr. Watson: Objected to as immaterial and not proper re-direct examination and as leading.

A. There was.

RDQ1141. Were you present at that meeting?

Same objections.

A. Yes.

RDQ1142. Was Mr. Frazer there? A. He was.

RDQ1143. Was there a reorganization committee appointed? A. Yes, there was.

RDQ1144. What was the principal reason for having a re-
4134 organization of the company?

Same objections.

A. They wanted to put it under a new management as they were not satisfied to continue under the old management with the losses that were being piled up.

RDQ1145. Did they also require new money in order to continue the business?

Mr. Watson: The same objection. I move to strike out all this line of testimony as immaterial and irrelevant and not proper re-direct examination; also that the questions are improper in form and leading.

4135

A. Yes.

RDQ1146. How much money did they need?

Same objections.

A. They figured that they needed, I think it was, $15,000 or $18,000.

RDQ1147. Could they assess the stock of the old company?

Same objections.

A. They could not.

RDQ1148. Was there any way to get new money except by a reorganization in the nature of an assessment?

4136

Same objections.

A. That is the only way that was figured out.

RDQ1149. Were Frazer, Geyer and Waterman all on this reorganization committee?

Same objections.

A. Yes.

RDQ1150. Is that the committee that issued the circular already in evidence marked Exhibit 41?

Mr. Watson: The same objections and plaintiff's counsel renews his motion to strike out all of this testimony as incompetent, irrelevant and immaterial.

4137

A. Yes.

RDQ1151. I will ask you if on or before May 10, 1905, substantially all of the stockholders had agreed to this reorganization scheme, including Frazer, Geyer and Waterman?

Mr. Watson: The same objections and the same motion is renewed.

A. My recollection is that most of them had agreed to it.

RDQ1152. Who was Mr. William E. Weaver? A. He was Mr. Waterman's lawyer.

RDQ1153. Was he also a stockholder in the Frazer and Geyer Company?

4138 Mr. Watson: The same objections and the same motion is renewed.

A. I think he had four shares of stock. He had a few shares and I think it was four.

RDQ1154. Was it given to him by Mr. Waterman? A. Given to him by Mr. Waterman for services rendered to Mr. Waterman.

RDQ1155. I ask you if on or about May 10th Mr. Weaver, the attorney for Mr. Waterman, sent out this circular to stockholders?

4139 Mr. Watson: The same objection and the motion is renewed.

A. I think I received one substantially like that.

RDQ1156. Do you know Mr. Weaver's signature? A. Yes.

RDQ1157. Is that his? A. That is his.

Mr. Bacon: I offer in evidence a letter of May 10, 1905, W. E. Weaver to A. S. Bacon, enclosing a circular, bearing the same date, W. E. Weaver to the stockholders of the Frazer & Geyer Company.

Letter and circular marked Exhibit A-62.

Mr. Watson: Objected to as irrelevant and immaterial.

4140 RDQ1158. After May 10, 1905, I will ask you whether or not Mr. A. A. Waterman, Mr. Frazer and Mr. Geyer all withdrew from the reorganization scheme suggested in Exhibit 41?

Mr. Watson: The same objection and motion renewed.

A. Yes, we did.

RDQ1159. Is it not a fact that on May 15th Mr. Frazer told Mr. I. E. Chapman that he would do everything in his power to break up the company and prevent anybody from getting anything?

Mr. Watson: The same objections and same motion renewed.

4141

A. Yes, just about that date.

RDQ1160. Did Mr. Frazer tell you the same thing?

Mr. Watson: Same objection and motion renewed.

A. He told me so about that time, yes.

RDQ1161. As an answer to Defendant's Exhibit A-62, were not the suits brought that have been testified here by you?

Mr. Watson: The same objections.

A. The foreclosure suit?

RDQ1162. The suit of Chapman against Frazer & Geyer Company; Chapman Estate against Frazer & Geyer Company, and Waterman & Co.; Frazer & Geyer Company against Waterman & Co.; and Chapman against Frazer? A. Yes.

4142

RDQ1163. All begun about May 17th?

Objected to as entirely irrelevant and immaterial.

A. Yes.

RDQ1164. These suits having all of them been begun on or about May 17th was not the letter Plaintiff's Exhibit 136 addressed by Alexander S. Bacon, attorney, to William G. Frazer and Hobart W. Geyer and A. A. Waterman, received by you (showing witness paper)?

Mr. Watson: Same objections, and motion renewed.

A. Yes.

4143

RDQ1165. Did not this letter contain an offer of Mr. I. E. Chapman to advance the assessment on all those shares of stock whose owners could not afford to pay?

Mr. Watson: The same objection and that the exhibit speaks for itself.

A. Yes.

RDQ1166. After sending out this letter after the beginning of these suits did Mr. Waterman reverse his attitude and come in under the new scheme of reorganization, which differs from the other only in making a so-called assessment of $20 instead of $15 per share.

4144

Mr. Watson: The same objection and motion renewed.

A. Yes.

RDQ1167. Thereafter you and Mr. Frazer brought actions for receivers in order to prevent this reorganization, did you not?

Mr. Watson: The same objection. The complaint is in evidence.

A. Yes, in order to prevent the reorganization and prevent our losing our positions as manager, or Mr. Frazer as manager
4145 and myself as treasurer.

RDQ1168. Then that was the principal object in beginning those suits, was it? A. That is my recollection.

RDQ1169. Then later when you found out that Mr. Frazer had been misrepresenting you to the Chapmans, you came over to the new reorganization, did you?

Mr. Watson: The same objections.

A. When I found out that he was going to wreck the thing, just so as to make the Chapmans lose all that they had in it, I went over to Mr. Chapman. I told Frazer that I would not stand with him for any such thing as that, and I went over and told Mr. Chapman that anything I could do to help I would do.

RDQ1170. You and your friends had about how much in it
4146 at that time? A. $30,000.

RDQ1171. Did you and your friends all come in and pay the $20 assessment, so-called? A. Yes.

RDQ1172. Were there any of the stockholders of the Frazer & Geyer Company that did not come into the reorganization and pay their $20 assessment? A. The only one I can remember was Mr. Frazer's wife and Mr. Wickes, a friend of Mr. Frazer, who each owned two or three shares. Mr. Frazer's assessment, I think, was paid by Mr. Chapman after the stock was bought at auction, or receiver's sale.

RDQ1173. Mr. Frazer's stock, or substantially all of it, was held by Mr. Chapman as collateral to a loan? A. Yes.

4147

RDQ1174. And was afterwards sold out? A. He paid the assessment to protect his loan.

RDQ1175. So that everybody came in excepting perhaps the trifling shares of Mrs. Frazer and Mr. Wickes?

Mr. Watson: The same objections and motion to strike out the testimony as immaterial and not proper re-direct examination.

RDQ1176. Did you pay your assessment without assistance? A. Yes, I paid it without assistance.

RDQ1177. Then Mr. Martling was made manager in the very beginning? A. I think on the start Mr. Chapman himself was there regularly for two or three months. After that 4148
Mr. Martling was made the manager.

RDQ1178. He was a new man, brought in from the outside? A. Mr. Martling was one of the salesmen for the old firm of A. A. Waterman & Co., who had been with them for several years.

RDQ1179. After Mr. Martling was disposed of you were made manager? A. Yes, when he left in October, 1908, I think it was.

RDQ1180. And since that time you have been very prosperous?

Mr. Watson: The same objections. The books of the company are the best evidence.

4149

A. Yes, doing well.

RDQ1181. Was Mr. A. A. Waterman a stockholder and director in the Modern Pen Company? A. Yes.

RDQ1182. Has there ever been a time when the trade name of A. A. Waterman & Co. was printed in any way like the name L. E. Waterman Company so as to simulate it even remotely? A. No.

RDQ1183. There never has been any claim of that character, has there? A. I never heard of any such claim.

RDQ1184. You said that 50 per cent of your product was end joint pens, is that so? A. About 50 per cent in number, not in value.

RDQ1185. And that 50 per cent in number comprises exclusively cheap pens, does it not? A. They retail from $1 up to $3.50, without the mountings.

RDQ1186. While the middle joint and self-filler retail for how much? A. From $2 to $6, the plain ones without any mounting.

RDQ1187. Does the Modern Pen Company ever sell goods on consignment? A. Once in a while a customer will want some goods for something special and just for a selection we would send them. That is only in special cases. It does not amount to much of anything.

4151 RDQ1188. Just one pen? A. Yes, where one of their customers will want a special pen they will write us to send them a few so that they will have them to select from in case they do not have just what they wanted in stock. Sometimes they return all, sometimes they keep all.

RDQ1189. To that same dealer you would not sell a dozen pens under that consignment? A. It is an out and out sale.

Mr. Watson: I move to strike out all this line of testimony as immaterial and irrelevant to any issue in the case.

RDQ1190. Have you information that L. E. Waterman Company sell their goods throughout Mexico on consignment?

4152 Mr. Watson: Objected to as hearsay, immaterial and irrelevant.

A. It has been so reported to me.

Mr. Watson: I move to strike out the answer as incompetent.

RDQ1191. By whom?

Mr. Watson: The same objection.

A. By my salesmen.

Mr. Watson: I move to strike out the answer as incompetent.

RDQ1192. Do you know of any other manufacturers of pens who test them by machinery? A. I do not; no, sir.

RDQ1193. Have you ever heard of any? A. No, sir; that is an original idea of my own that I had worked out.

RDQ1194. You had a machine made? A. I had a special machine made.

RDQ1195. Under your directions? A. Yes.

RDQ1196. Did you ever know of any other manufacturer of pen points that had a high pressure machine to make the gold homogeneous?

Mr. Watson: The same objection.

A. No, the only thing I have heard of has been in the line 4154
of a trip hammer, which, of course, does not press the pen scientifically the same as our hydraulic press.

Mr. Watson: I move to strike out all this line of testimony as immaterial and incompetent, and not proper re-direct examination.

RDQ1197. Have you made a computation of the agency reports on some of your customers, so as to know who are quoted as millionaires, and in high figures?

Mr. Watson: Objected to as immaterial and irrelevant, and not proper re-direct examination.

A. Yes, partially, that is all. Our ledger is kept by the card 4155
system and every month every account that has been closed out, that there is nothing owing, those cards are taken out and put into the other ledger; and I had the bookkeeper go through those open accounts early in the month, which was when they are at the smallest number, and he found that there were fourteen or fifteen of our customers who are rated at a million and upwards in Dun's agency book.

RDQ1198. And how many at half a million and upwards? A. Fifteen or twenty that were rated from $200,000 or $300,000 up. I have forgotten just what the figures were.

Mr. Watson: I move to strike out all this line of testimony as immaterial and irrelevant, and not proper redirect examination.

A. (Continued.) If we went through all of our accounts which are more or less active, more than this, we would probably find five or six times as many with those ratings.

RDQ1199. When the original firm of A. A. Waterman & Co. was organized in 1901, did Mr. Waterman transfer his patents to that firm? A. Yes.

RDQ1200. Do you remember how early in this litigation you told me, or the Chapmans, anything about this sale of Royal
4157 Ideal Pen Holders to Mr. Saadi?

Mr. Watson: Objected to as immaterial and irrelevant to any issue in this case.

RDQ1201. Was it long after the Saadi litigation had begun and when the testimony was taken? A. It was some two to four months after that, I think.

RDQ1202. Why was it that you did not mention this before?

Mr. Watson: The same objection.

A. When the suit was begun against Saadi I did not have any interest in it, I had no interest in the imprint "Royal Ideal" at all; I never paid any attention to it until the injunction was
4158 granted enjoining him from selling pens imprinted A. A. Waterman & Co.

RDQ1203. And it was such a trifling matter that you did not give it thought, is that right?

Mr. Watson: The same objection, and as leading.

A. Yes, I did not pay any attention to it whatever.

Mr. Watson: The same motion to strike out.

RDQ1204. How many completed pens do you make a day on an average?

Mr. Watson: Objected to as immaterial and irrelevant.

4159

A. We will average in ordinary times between 500 and 600. In the fall, in the rush season it is considerably larger than that.

RDQ1205. How many men does it take to assemble the parts for this number?

Mr. Watson: The same objection.

A. We have one man at it continually, and another one helping out who works part of the time, perhaps not one-half.

RDQ1206. You stated that all of your employees in your factory are expert workmen; but do those who assemble the pens get as big wages as those in many other departments?

Mr. Watson: Objected to as immaterial and irrelev- 4160
ant to any issue in this case.

A. No, sir; they do not. One of them gets good wages, the other one does not get as much. He is more in the line of an assistant.

RDQ1207. About how much does the man get who is paid the most?

Mr. Watson: The same objection.

A. $20 or $22; the other gets $14.

RDQ1208. While many of your experts get more than that? A. Yes.

RDQ1209. Is the pen that retails at $1 the cheapest pen that is made that is marked A. A. Waterman & Co.? A. Yes. 4161

RDQ1210. Do you have any makes that sell for less than that? A. No, we do not make anything to list less than $1, but we make a cheaper pen that we list at $1 that is made with a cheap holder and a cheaper pen in it, a smaller pen, lighter pen and we give a larger discount.

RDQ1211. What is that pen called? A. It is stamped with the imprint "Federal." A good many have the dealers' imprint on them. It is what we call our imprint line.

RDQ1212. Do you make any pens with manufactured iridium? A. Yes, the cheap pens.

4162

RDQ1213. How cheap are those? A. $1 up. All of our $1 list pens have manufactured iridium. Anything above that, the higher price, has the native iridium.

RDQ1214. Have you at all times, both before this litigation begun and after, acknowledged the right of the L. E. Waterman Company to the trade-mark "Ideal?" A. Yes.

RDQ1215. And when this small order from Saadi came in for cheap pens did it occur to you that you were violating the trade-mark?

Mr. Watson: The same objections and as immaterial, incompetent and irrelevant.

4163

A. No, he showed me he had what I supposed and I still understand, was a trade-mark, Royal Ideal; I presumed he had as much right to Royal Ideal as the L. E. Waterman Company had to Ideal.

Mr. Watson: I move to strike out the answer and counsel for plaintiff calls for the production of the exhibits or copies of the label used by Saadi and introduced during the taking of his testimony, that this witness may be advised as to what Mr. Saadi really had.

Mr. Bacon: Defendant's counsel states that the original exhibits were left with Mr. Saadi by consent and copies will be produced as soon as they can be had from

4164

Washington.

RDQ1216. You spoke of sending circulars and signs to a customer in Italy. I ask you if these are the signs that you sent to him with this circular (handing witness sign and papers)? A. Yes, those are samples of them.

Mr. Bacon: The two placards and the circular are offered in evidence and marked Exhibit A-63.

Mr. Watson: Objected to as immaterial and irrelevant.

RDQ1217. Are these circulated extensively through the United States and Europe?

4165

Mr. Watson: Objected to as leading and immaterial.

A. Yes, sir; we send them to most all of our customers.

RDQ1218. Have you in any single instance ever issued an advertisement that merely referred to your product as Waterman pens? A. No, sir.

RDQ1219. Did you ever knowingly pay for the advertisement of any customer that so referred to that pen as Waterman pen only?

Mr. Watson: Objected to as the testimony of this witness is to the contrary.

A. No.

4166

RDQ1220. Your advertisements are mostly in the trade journals, are they? A. No, not so much in the trade journals; a number of the trade journals have preferred not to take our ad until this litigation is finished.

RDQ1221. Your advertisements are in all sorts of papers and periodicals? A. Yes.

RDQ1222. I show you the Cornell Widow and an advertisement therein, and ask if that is a very fair representation of all of your advertisements (showing witness paper)? A. Yes.

The advertisement referred to in the Cornell Widow is offered in evidence and marked Exhibit A-64.

Mr. Watson: The same objections.

4167

RDQ1223. I call your attention to a quotation contained in a placard and circular as follows: "If it isn't an A. A. it isn't a Modern," and I ask you if that quotation is found in substantially all of your advertisements? A. Yes.

RDQ1224. Have you ever knowingly sold either directly or indirectly, through any salesman any A. A. Waterman & Co. goods simply as Waterman? A. No, sir.

Mr. Watson: Objected to as incompetent and it is impossible for this witness to know.

A. No, sir.

4168

RDQ1225. Have you in each instance given explicit instructions to salesmen as to how your goods should be sold, and if so, state the tenor of such instructions? A. The instructions have been for them to sell them as the goods of A. A. Waterman & Co., that we are making our self-fillers and middle-joint pens of a different class and so much superior to the Waterman Ideal pens, that we do not want them confounded at all; and our end-joint line is practically the same as the Ideal, as far as quality is concerned, but the price is about one-half the price of the Ideal.

RDQ1226. Then the middle-joint and the self-filler sell for about the same as the Ideal? A. Yes.

4169 RDQ1227. And the end-joints which are just as good as the Ideal sell for about one-half? A. Yes.

*RE-CROSS EXAMINATION by Mr. Raymond:*

RXQ1228. What percentage of the stock of the Frazer & Geyer Company did the Chapmans control prior to 1905? A. How much prior do you mean?

RXQ1229. From 1903 to 1905? A. I have not that information with me now. I would have to look it up.

RXQ1230. Is it not a fact that they controlled somewhat less than a control of the stock in 1904? A. No, they and their friends had control as far as the actual investment was concern-

4170 ed, but the control was in the common stock, and Mr. Frazer and Mr. Chapman had made what the Colonel calls a pooling arrangement whereby it was tied up so that Mr. Frazer practically controlled the company in that way.

RXQ1231. And Mr. Chapman could not have his own way in the management of the company at that time? A. No, he could not.

RXQ1232. When did Mr. Chapman first begin to express a desire to have his own way in the management of the company? A. I think it was late in 1903 or in 1904 when the statement showed that we were losing money.

RXQ1233. Was it not in 1903? A. I say it was either late in 1903 or early in 1904.

4171

RXQ1234. Don't you know that Mr. Chapman entered into negotiations with Mr. A. A. Waterman in 1902 and 1903 with a view of securing a better control of the name A. A. Waterman? A. I never heard of it.

RXQ1235. At whose instigation were these various modifications of the contract in 1905? A. I got it from Mr. Frazer that it was through Mr. Chapman, but I did not have anything personally to do with them. Mr. Chapman seemed to be prejudiced against me, and I have found out since that he was prejudiced through statements that Mr. Frazer had given him.

RXQ1236. Did you ever have any conversation with Mr. Chapman? A. Only what came up at the directors' meetings.

RXQ1237. You never had any conversation with him about making and signing these various contracts? A. No, not until the last one that was made I think before the reorganization in 1905.

4172

RXQ1238. At whose instigation was this so-called partnership contract extended from ten years to forty years? A. I got all my information from Mr. Frazer.

RXQ1239. Don't you know that Mr. Chapman insisted upon that? A. So Mr. Frazer told me. The first modification was that Mr. Chapman thought that the profits of the copartnership should go to the stockholders.

RXQ1240. And did not Mr. Chapman insist that Mr. Waterman be more closely connected with the company than he was prior to that time? A. I don't know; he may have; I don't know.

4173

RXQ1241. Didn't you take any part in those negotiations which led up to an assignment of all the profits of the A. A. Waterman & Co. by Mr. Waterman to the Frazer & Geyer Company? A. No.

RXQ1242. Didn't you know anything about it? A. I knew they were working out some plan, but I did not know anything about the details of it until the papers were brought to me for signature.

RXQ1243. Did you know of the relation of Mr. Waterman and the Chapmans at that time? A. No, I did not know they had any special relations.

RXQ1244. In 1905 did not Mr. Waterman take a stand with the Chapmans in this reorganization matter? A. At the time of the reorganization he did not at first and then he went over. That is what troubled Mr. Frazer a whole lot just before the break came. After the break and Mr. Frazer had said that Mr. Waterman would stick to us, then after two or three days he said he was afraid Mr. Waterman was going with the Chapmans.

RXQ1245. Don't you know that all that time Mr. Waterman was in negotiation with the Chapmans? A. No, I do not.

RXQ1246. Don't you know that on May 27th Mr. Waterman made a private contract with Mr. Chapman? A. Yes,
4175 that was after the suits were brought.

RXQ1247. You did not know anything about it at that time? A. No.

RXQ1248. And you did not even suspect it? A. No, I got all my information from Mr. Frazer.

RXQ1249. When did you first hear anything about the foreclosure of the chattel mortgage? A. The latter part of May, 1905.

RXQ1250. Do you remember when that chattel mortgage was first put on the property? A. No, I think it was in 1904, but I am not positive.

RXQ1251. Was there not anything said at that time about Mr. Chapman's putting the money into the stock of the com-
4176 pany? A. I don't know. It may have been.

RXQ1252. Did Mr. Chapman refuse to put the money into the stock of the company? A. He did not put it in, so if he was asked he must have refused.

RXQ1253. Did he not insist on its being put in the form of a mortgage on the assets of the company? A. I would not be surprised, as we gave them a mortgage and we would not have done so voluntarily.

Adjourned to Wednesday, April 19, 1911, at 10:30 A. M.

4177

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.

4178

Met pursuant to adjournment at the office of Alexander S. Bacon, 37 Liberty Street, New York, April 19, 1911, at 10:30 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Complainant.
Alexander S. Bacon, for Defendant.

HOBART W. GEYER, resumed the stand.

*RE-CROSS EXAMINATION continued by Mr. Raymond:*

4179

RXQ1254. Do you know how much money Mr. I. E. Chapman and W. L. Chapman and Alfred N. Chapman and Harriet Buchanan actually put in the stock of the Frazer & Geyer Company?

Mr. Bacon: Objected to as not re-cross examination; all that has been gone into on the cross-examination.

A. Isaac E. Chapman had $27,000 in the stock; William L. Chapman had $4,900; I don't know just how much the rest of the family had, but it was in the neighborhood of $15,000 or $20,000, I think—the family and the estate.

RXQ1255. Was that in the stock of the company? A. In the stock of the company, yes.

By Mr. Bacon:

RDQ1256. That does not include the friends; that is only the relatives? A. Just the immediate family.

By Mr. Raymond:

RXQ1257. Can you tell me when this money was put in? A. No, I have not the date with me.

RXQ1258. Was it prior to 1904? A. Yes, there was no stock issued after. There were ten shares of stock issued after
4181 1903 and 1904. I think that ten shares was issued to a man named Hoffman; and the Chapmans did not buy any stock after 1903.

RXQ1259. After they put this amount in the stock was there any stock remaining in the treasury of the company? A. There was.

RXQ1260. How much? A. About $175,000.

RXQ1261. Still remaining in the treasury? A. Yes, that had never been issued.

RXQ1262. After the Chapmans had put in this sum of money, how did they advance money after that? A. I think they advanced it on collateral notes. My recollection now is that they had our accounts receivable assigned to them covering their loan
4182 and afterwards that was changed over into a chattel mortgage.

RXQ1263. Wasn't there any instrument issued to protect these sums of money which they had invested in the stock? A. I never heard of any; I don't remember any.

RXQ1264. You don't know why it was done in that way instead of their buying treasury stock of the company? A. No, I presume they had put all the money into this stock that they cared to.

RXQ1265. When you come down to 1905, will you state what occurred with reference to Mr. Frazer and the Chapmans? A. You mean now in May or June, or earlier?

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RXQ1266. Take it from January, 1905? A. Along the first part of 1905 there was some discussion as to a new agreement, or a change of the agreement that we had. I remember that.

RXQ1267. What agreement? A. The agreement between Arthur A. Waterman, I think it was, and Frazer & Geyer Company. There were three or four agreements there. I have forgotten now just which it was, but I know at that time I had one or two evenings that I was over at Mr. Chapman's house, with the others, discussing the agreement that was to be changed, and that was the first one where I had had anything to do with it, and I have forgotten just what changes were made. The agreements are offered in evidence. They show for themselves.

4184

RXQ1268. Was not Mr. Waterman at that time complaining that he did not have sufficient capital to expand the business as he desired? A. I don't remember about that.

RXQ1269. What was Mr. Waterman's value to this concern?

Mr. Bacon: Objected to, as it is impossible for this witness to state a man's value.

RXQ1270. What was he good for? A. He had the decision as to styles and prices, and discounts on the fountain pens and he acted as the principal salesman, I should think you might call him. That was the duty that he had all the time that he was with us, the parts that he had charge of.

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RXQ1271. What did Mr. Waterman actually do with reference to supervising the styles? A. He passed on them, as I understand it; he passed on them entirely.

RXQ1272. Did you ever see him when you were there, passing on styles? A. Not personally, no. I was not in the office much of the time when Mr. Waterman was there.

RXQ1273. Did you ever hear of his passing on any styles? A. Yes.

RXQ1274. Rejecting any styles? A. They were being changed continually. It was done under his supervision.

RXQ1275. Did you ever change the place where you bought your rubber, from the time you started in business until the

present time? A. Yes, we used to buy from the Goodyear Vulcanite Co. part of our stock. After Mr. Waterman came with us we bought from the American Hard Rubber Company.

RXQ1276. You always bought the same quality, didn't you? A. I don't know whether there was any difference in the quality or not. It is so many years since we have had Goodyear rubber that I don't remember just what that was.

RXQ1277. I mean you always bought the same quality from the American Hard Rubber Company? A. Yes, we always bought the Akron rubber.

RXQ1278. Do you claim that you ever changed the style of your pens from the time you made them in 1899 and 1901?
4187 A. The style was continually changing. When we first made the self-filler we twisted it with our fingers. Under the Stone patent it is twisted with a button on the end of the holder.

RXQ1279. Mr. Waterman was not the inventor of that pen, was he? A. I think the invention was gotten up on his idea. That is my understanding of it.

RXQ1280. Was not Mr. Stone the inventor of that? The patent was taken out in his name? A. Mr. Stone was the superintendent or foreman that worked under Mr. Waterman. He was Mr. Waterman's direct representative.

RXQ1281. Was not the patent taken out in Mr. Stone's name? A. Yes.

RXQ1282. Did not Mr. Stone work on that? A. As I stated,
4188 it was Mr. Stone that elucidated Mr. Waterman's idea; that is my recollection.

RXQ1283. Did not Mr. Stone make affidavit that he was the inventor of this pen? A. I presume he did. He is the one that took out the patent.

RXQ1284. You would not know personally anything about what took place at that time? A. That is what I stated. That was all my understanding. I met Mr. Waterman very seldom during the day, and I did not know just what he was doing.

RXQ1285. What was Mr. Waterman's attitude in January, 1905? A. My recollection is that he and Mr. Frazer were working together all the time.

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RXQ1286. Did Mr. Waterman express a desire to go in business for himself? A. I think there was something of that sort. I think that was the reason of the change of the contract or agreement.

RXQ1287. Do you remember what he stated as the reason he wanted to go in business for himself? A. No, I do not. Mr. Waterman and I had very little to do with each other, because I was not around when he was, or he was not around when I was, rather.

RXQ1288. Was Mr. Waterman present at these discussions that you had with Mr. Chapman over at his house? A. Yes, there were two or three evenings that we were there.

RXQ1289. Did Mr. Chapman say that he was willing that Mr. 4190
Waterman should go into business for himself in the western territory? A. That I don't remember.

RXQ1290. That was finally embodied in the contract? A. I don't know. The contract shows. I don't remember the discussion. It was very voluminous. I have forgotten just what it was.

RXQ1291. Didn't you ever have any discussion with Mr. Chapman alone after this? A. No.

RXQ1292. Do you know whether Mr. Frazer did? A. Mr. Frazer said he did, but I don't know anything about it.

RXQ1293. Was there any unfriendliness between Mr. Chapman and Mr. Frazer at that time? A. I don't know; I don't know just when that started. I think the unfriendliness started 4191
after the annual meeting early in April or at the annual meeting.

RXQ1294. Did not Mr. Chapman say that he did not care whether Mr. Waterman stayed with the concern or not? A. Not to my knowledge.

RXQ1295. Didn't he always take that attitude? A. Not to my knowledge. I never heard anything of it.

RXQ1296. Do you remember those contracts in June, 1905, did you have anything to do with those? A. Which contracts are those?

RXQ1297. The partnership agreement? A. You mean between Chapman and Waterman?

RXQ1298. Yes. A. No, I didn't know anything about them.

RXQ1299. When did you first hear any discussion of a partnership between the Chapmans and Waterman? A. It must have been the latter part of June, I think, 1905.

RXQ1300. After the contracts were actually made? A. I don't remember just those dates now. There were so many changes at that time it would be impossible to tell which came first, or what happened at any certain date.

RXQ1301. Do you remember Mr. Waterman ever at any time expressing himself to you as being dissatisfied with the arrangement he was working under? A. Mr. Waterman had no conversation with me to amount to anything. I never had any-
4193 thing to do with him.

RXQ1302. Was the interest always paid on these chattel mortgages? A. It was.

RXQ1303. Was the stock paying any dividend? A. There was no dividend paid after, I think February, 1903, a dividend was paid on the first preferred stock, is my recollection.

RXQ1304. A cash dividend? A. A cash dividend.

RXQ1305. So the Chapmans were getting their interest on their money all during this time? A. On their mortgages, yes.

RXQ1306. What occurred with reference to the reduction of Mr. Frazer's salary? A. As I recollect it, at the first meeting of the directors after the meeting of May, 1905, his salary was reduced to $40, and his contingent salary raised. Whether he
4194 accepted it or refused to accept it, I have forgotten. I know he was considerably upset about it.

RXQ1307. From whom was he to receive this salary? A. From the Frazer & Geyer Company.

RXQ1308. Did he receive any salary from A. A. Waterman & Co.? A. No, he received nothing but the 10 per cent on the investment of $500.

RXQ1308a. While you were a partner in A. A. Waterman & Co. did not Mr. Chapman assume to act and dictate the policy of A. A. Waterman & Co.? A. No, not to my knowledge; I never knew that he did. It was left entirely with Mr. Frazer.

RXQ1308b. Was he not with Mr. Frazer a great part of the time? A. Not to my knowledge.

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RXQ1308c. Didn't you see Mr. Chapman down there? A. No.

RXQ1308d. Didn't you go to his office and confer with him? A. Very seldom. No, I don't know that I ever went to his office.

RXQ1308e. Didn't you make daily reports to Mr. Chapman of what was doing? A. No, I have no recollection of any such thing.

RXQ1308f. Don't you know that Mr. Frazer was in constant touch with Mr. Chapman all during these times? A. I don't know it. I understood that he was close with Mr. Chapman from the time Mr. Chapman first came in there. He told me that he and Mr. Chapman were conferring together.

4196

RXQ1309. Did A. A. Waterman & Co. take any action independent of the Frazer & Geyer Company? A. A. A. Waterman & Co. attended to the selling of the goods entirely, practically running the business.

RXQ1310. They had no business independent of what they turned over to the Frazer & Geyer Company, did they? A. I don't quite catch what you mean.

RXQ1311. They turned over all their profits to the Frazer & Geyer Company, did they? A. All except the 10 per cent that came to Mr. Frazer and myself, and I think Mr. Waterman assigned all of his to the Frazer & Geyer Company.

RXQ1312. And A. A. Waterman & Co. did not do any business except with the goods that they got from the Frazer & Geyer Company? A. Yes, they bought thousands of dollars of stock outside; they bought pearl goods and boxes and advertising matter and paid all their bills for advertising.

4197

RXQ1313. Where did they get the money to pay them? A. From the Frazer & Geyer Company.

RXQ1314. Do you remember that they bought goods on terms, to be paid only after they were sold? A. No, we paid all our creditors and what surplus we had left over we would pay to the Frazer & Geyer Company.

RXQ1315. You would use the accumulated profits of the A. A. Waterman & Co. to buy these goods? A. No, we used

whatever we had. We used the credit of Frazer & Geyer Company. They were our principal creditors, and instead of paying them we paid the other people first. They borrowed money from the bank as well. They did a general business the same as any concern.

RXQ1316. Who had to do with the policy as to whether the A. A. Waterman & Co. were to buy goods in this way, or not? A. Mr. Frazer, I think, did practically all the buying.

RXQ1317. Was it not all done under the authority of the resolutions from the Frazer & Geyer Company? A. No.

RXQ1318. Was not that done by the direct authorization of Mr. Chapman as president of the Frazer & Geyer Company? A.
4199 No, A. A. Waterman & Co. never consulted with Mr. Chapman; that is I never did and I don't know that Mr. Frazer ever did, as to how we should run the business of A. A. Waterman & Co. The only thing that was discussed between them was the prices that A. A. Waterman & Co. should pay the Frazer & Geyer Co. for the goods.

RXQ1319. That price was simply a matter of bookkeeping, was it not? A. No more so than anything else.

RXQ1320. Was not the price computed on the basis that he was going to turn all the profits over to Frazer & Geyer Company? A. Yes, practically.

RXQ1321. As a matter of bookkeeping? A. It did not make much difference whether it went that way, or whether we turned
4200 it over later on as per our agreement, when we made the assignment or agreement, or whatever it was.

XQ1323. Take it at the end of 1903, was there not a deficit; did not A. A. Waterman & Co. owe Frazer & Geyer Company a considerable sum? A. Yes, they always owed Frazer & Geyer Company.

RXQ1323. What was done at that time to adjust this difference? A. I have forgotten now.

RXQ1324. Wasn't there a bookkeeping entry balancing the account? A. I think there was.

RXQ1325. In 1905 the same thing happened? A. I don't know whether there was any entry made in 1905 or at the end

4201

of 1904. My recollection is it was at the end of 1904, but I am not sure.

RXQ1326. In 1905 the same state of affairs occurred didn't it a book deficit? A. That is what I said; when I said 1904, I meant December 31, 1904.

RXQ1327. In 1905, was there not a deficit also? A. That is when there was a big deficit that showed up.

RXQ1328. Was not the matter of making a bookkeeping entry to offset this deficit taken up? A. No, I think that was done by Mr. Frazer and myself and my recollection is that when Mr. Chapman—when it was brought to his attention by the accountant, that he did not sanction it at all; he said that was not the proper thing to do.

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XQ1329. He made that an excuse to force out Mr. Frazer, didn't he? A. I think the only excuse he had for forcing out Mr. Frazer was the fact that Mr. Frazer was losing so much money.

RXQ1330. As a matter of fact was not this deficit in 1905, a pure matter of bookkeeping? A. Yes.

RXQ1331. Frazer & Geyer Co. had charged A. A. Waterman & Co. too much for the goods? A. I think not. It was a case that the money had been lost in the business.

RXQ1332. In 1904, it was a pure matter of bookkeeping, was it not? A. The same thing applies. It was a case that money had been lost. I don't remember any entry having been made except one. I have not looked it up so I don't remember.

4203

RXQ1333. How was this money lost? A. Lost in the fact that the expenses of running the business were larger than the profits.

RXQ1334. What expenses? A. Salesmen, advertising, general expenses of all kinds.

RXQ1335. How about cases? A. Show cases?

RXQ1336. Show cases? A. What about them. What do you mean?

RXQ1337. Didn't you spend a large amount of money in show cases? A. Surely.

RXQ1338. Was not all that money charged up against A. A. Waterman & Co.? A. I think so. I think A. A. Waterman & Co. bought those show cases.

RXQ1339. Was not Mr. Waterman complaining all the time that he was expanding the business and the show cases were needed for the new business that he was getting? A. I don't know. As I told you before I did not have much to do with Waterman.

RXQ1340. Was not that matter discussed with A. A. Waterman & Co.? A. I don't recall it. I know Mr. Frazer was doing the buying and he bought a good many thousand dollars worth of show cases.

4205 RXQ1341. Especially at that time? A. All the time Mr. Waterman was connected with us I presume we must have paid $10,000 or $11,000 for show cases.

RXQ1342. And they were bought in that very time, 1904, 1905? A. They bought show cases from the start; from the time we first went with Mr. Waterman. The old firm of William G. Frazer & Co. furnished show cases.

RXQ1343. What was the year you did the largest business, in A. A. Waterman & Co.? A. I don't know, I think it was 1903.

RXQ1344. Was it not 1904? A. I don't remember.

RXQ1345. Did they not do $160,000 worth in 1904? A. I don't remember. I have not those figures with me. I think the largest year's business we had was about $146,000; that is my

4206 recollection.

RXQ1346. That was the largest amount of business they ever did in a year? A. That the old concern ever did, yes. That is my recollection.

RXQ1347. What did Mr. Chapman know about the pen business; was he ever down in the factory? A. I did not meet Mr. Chapman. I don't know. I heard that he was at the factory sometimes, but I did not meet him there.

RXQ1348. Do you know whether Mr. Chapman was a practical pen man? A. I think he was not.

RXQ1349. Was there anybody in the family who had invested in this that was a practical pen expert? A. I don't know any of them that are.

RXQ1350. Were any of them ever in the factory directing the operations? A. I don't think so, not to my knowledge.

RXQ1351. What was the function of the Chapmans in this concern? A. I would call them financial backers.

RXQ1352. They simply backed the concern financially when they got into difficulties? A. That is what they did. Whether they did it "simply" or any other way, it was quite an item to furnish the amount of capital that they did.

RXQ1353. They did not know, or have anything to do with the pen business at all? A. Except as directors of the Frazer & Geyer Company.

RXQ1354. Simply financial management? A. They discussed the management. Practically all they did was to attend to the financial part of it.

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RXQ1355. The same condition applies today, does it not? A. It does.

RXQ1356. None of the Chapmans are practical pen experts? A. I don't so consider them.

RXQ1357. And even to this day they never have anything to do in directing the operations of the factory? A. No, they do not now at all.

RXQ1358. In this so-called copartnership of A. A. Waterman & Co. there is nobody who is a practical pen man today, is there? A. I don't know of any so-called copartnership.

RXQ1359. In A. A. Waterman & Co.? A. That is a copartnership. Mr. I. E. Chapman and Mr. William L. Chapman are members of that firm.

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RXQ1360. And there is no practical pen man connected with the concern? A. I don't consider them practical pen men. They are practical business men, but not practical pen men.

RXQ1361. They have nothing to do with the factory? A. Except that they have me look out for it and Mr. Van Valer as superintendent.

RXQ1362. They themselves have nothing to do with it? A. They give no personal attention to it themselves.

RXQ1363. Was Mr. Waterman a practical pen man? A. He professed to be.

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RXQ1364. Did you so consider him?

Objected to as immaterial.

A. I don't know what his knowledge in regard to pens is, I am sure.

RXQ1365. Why did you take him in partnership with you in the beginning? A. We had been selling the firm of A. A. Waterman & Co. of Boston a part of their product of gold pens, and when we heard that he was going to leave Boston or break his connection with his firm there we thought we could get all his business by having him come with us, and we could also increase that business largely by using our methods of doing

4211 business.

RXQ1366. You did not take him in partnership because of any knowledge that he had of the pen business? A. No, it was simply to get the business that they had, that the old firm of A. A. Waterman & Co. had in Boston.

RXQ1367. Then this provision that he should have the right to dictate as to the size and quality of pens was simply done as a compliment? A. That was an agreement between him and Mr. Frazer. I do not know anything about it. The co-partnership articles were drawn ready for signature.

RXQ1368. It was purely a complimentary agreement? A. I don't know; Mr. Frazer attended to that.

XQ1369. Didn't you take that up later in other copartner-

4212 ships? Did not that provision always appear in the copartnership? A. I think it did, but I don't think it was ever discussed at all.

RXQ1370. Was not that agreement put in there simply that Mr. Waterman should appear on paper to have some active function in the partnership? A. No, I think not. The firm would have been many thousands of dollars better off if that provision has not been in there.

RXQ1371. Then Mr. Waterman was not a success as a pen man? A. I don't know whether it was on account of that, or on account of the fact that he and Mr. Frazer did not quite agree on those details. That was something that they attended to entirely.

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RXQ1372. During the year from 1905 to 1906, Mr. Waterman was still connected with you, was he not? A. Yes, he was a member of the firm of A. A. Waterman & Co. and was a director and officer of the Modern Pen Company.

RXQ1373. Mr. Frazer was not connected with you? A. Not after the latter part of June, 1905.

RXQ1374. Did the business in 1905 and 1906 show any marked increase? A. I don't remember. I think it was increased, but I have not those figures.

RXQ1375. There was nothing so great that you would remember it? A. It is impossible to remember what the sales are for a series of years.

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RXQ1376. Were there any dividends paid in 1905 and 1906? A. There have been no dividends paid by the Modern Pen Company since its organization.

RXQ1377. Is it a fact that the Chapmans were obliged to loan more money to the concern in 1905 and 1906? A. They did later on; whether it was 1906, I do not know.

RXQ1378. Do you remember a note that was made to the Criterion Securities Company in 1905? A. No, I think there was a note made to Mr. Chapman that was endorsed over to the Criterion Securities Company.

RXQ1379. So the concern was not a revolutionizing success after Mr. Frazer got out of the concern? A. It is a success now.

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RXQ1380. But in 1905 and 1906? A. No, not immediately.

RXQ1381. How about after Mr. Waterman got out in 1906? A. After he got out the firm suffered from the fact that one-half of its territory had been given over to Mr. Waterman, which meant quite a reduction in the business.

RXQ1382. Didn't you make more money? A. I don't remember. I think we lost money right along for a while, for the first year after Mr. Waterman went west.

RXQ1383. Did not the business that you did show more profit? A. The business has not shown much profit until after Mr. Martling left and I was put in charge. Since then it has shown a good profit.

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RXQ1384. Mr. Waterman's regime, then, did not show any very great profit, did it? A. The first year after the reorganization there was a very good showing according to my recollection.

RXQ1385. What year was that? A. That was from July, 1905, to July, 1906.

RXQ1386. What did Mr. Waterman do about supervising the styles during that time? A. I don't think there were any changes in styles that year. I don't remember.

RXQ1387. What did Mr. Waterman do with reference to the company during that year? A. I think Mr. Waterman was on the road most all that time, selling goods.

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RXQ1388. That is all that he did? A. I think that is about all that he did; that is my recollection.

RXQ1389. In what part of the country was he selling goods? A. I think through the western part; I am not positive.

RXQ1390. That is what he calls his own territory, is it not? A. I don't know what he calls it.

RXQ1391. That was the territory that afterwards became his when he started in business for himself, was it not? A. I think it was practically that same territory. I am not sure of that either.

RXQ1392. How many salesmen did you have at the time Mr. Waterman was on the road?

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Objected to as immaterial.

A. I think we had six or eight; I have forgotten now. It may have been more.

RXQ1393. Mr. Waterman was the only salesman who had unlimited territory, was he not? A. He did not have an unlimited territory. I think the territory was divided up among the different salesmen and each one had his own territory.

RXQ1394. And Mr. Waterman had this western territory? A. I don't know; I think so; I am not positive; I don't remember just what he did have.

RXQ1395. Do you know what proportion of the business was sold by Mr. Waterman alone? A. I do not.

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RXQ1396. Was it a large proportion of the business? A. I think he sold about as much as any of the other salesmen. I don't remember just what his sales were.

RXQ1397. Just about the same as the other salesmen? A. I don't remember whether he sold much more or not.

RXQ1398. It was about just the same? A. I don't remember.

RXQ1399. Did he sell as much as all the other salesmen put together? A. I am quite sure that he did not.

RXQ1400. Did he sell as much as any three salesmen? A. I don't know. I don't think so. He may have.

RXQ1401. It was just about the same as the other salesmen? A. I don't know just what his sales were.

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RXQ1402. Then Mr. Waterman was not a great asset to the company as a salesman, was he? A. I consider that he was as good an asset or a better asset than any of the other salesmen that we had.

RXQ1403. But he was not a marvelous salesman that would sell more than half a dozen other men? A. He would sell more than some half a dozen men.

RXQ1404. I mean more than half a dozen of your other men? A. Not more than any half dozen men that we had. It would be an extraordinary salesman indeed that would do that.

RXQ1405. Whether he was a fair average salesman? A. I think Mr. Waterman had some salesmen working under him and their sales were kept separate from his, although they belonged to him; that is my recollection. I may be mistaken about that. I have not those figures at all. I have no way of telling without looking it up, to see what he did.

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RXQ1406. When did these accountants report on the books of the Frazer & Geyer Company? A. I think they reported semi-annually. That is my recollection.

RXQ1407. On January 1st and July 1st? A. I am not sure whether our books closed the first of January or the first of February or the first of March. The dates were changed in different years. I have forgotten just what they were then.

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RXQ1408. It was after this first audit, however, in 1905, that friction began to arise between Mr. Chapman and Mr. Frazer? A. I think so.

RXQ1409. Sometime in January or February? A. I think it was in February, that is my impression. But I am not sure of that. I have not looked up the dates.

RXQ1410. Didn't you have any conversations with Mr. Chapman at all about Mr. Frazer's management? A. No, I think not.

RXQ1411. When did this question of reorganization first come up? A. I think it was in April, 1905.

RXQ1412. And that came up at a directors' meeting? A.

4223 I don't think so. I don't remember.

RXQ1413. Didn't you testify that it came up in a directors' meeting in April, 1905, at which a reorganization committee was appointed? A. That was a stockholders meeting. A special meeting was called of the stockholders.

RXQ1414. Who was on that reorganization committee? A. I think there were about nine or ten on it. I think both the Chapmans were on it, W. L. and I. E., and Mr. Waterman, Mr. Frazer and myself, a man named Wilson, I think, and Mr. Hay and Mr. Jayne; that is my recollection. I am not sure all those were there.

RXQ1415. On your direct-examination you testified that there was no means of raising money. Did you have $175,000 worth

4224 of stock in the treasury? A. Yes.

RXQ1416. Was not that stock available for sale? A. There was no market for it, in the condition the company was in. You cannot get anybody to buy stock in a company that is losing money.

RXQ1417. When it was reorganized the stockholders were to contribute were they not? A. Yes, they did. They reorganized and were under a new management.

RXQ1418. Was the question of changing the management discussed at this meeting in April, 1905? A. Yes, I think it was. That was the principal thing that was discussed.

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RXQ1419. And in whom was it proposed to put the new management? A. I don't think that was discussed at all, although it may possibly have been.

RXQ1420. What part was Mr. Waterman to have in this new management? A. I don't know.

RXQ1421. Was not that discussed? A. I don't think so. I don't remember any discussion about it.

RXQ1422. Was anything said about Mr. Waterman starting business for himself in the western territory at that time? A. I don't remember it.

RXQ1423. Did not Mr. Chapman at that time say that he did not care whether Mr. Waterman stayed with the concern or not so long as he left his name there? A. I don't remember 4226
having heard Mr. Chapman make any such statement. He may have made it but I don't remember it.

RXQ1424. Was Col. Bacon present at that meeting? A. He was.

RXQ1425. Did he present any plan of reorganization? A. I think he did, yes. I think it was his plan that was discussed at that meeting.

RXQ1426. Did that plan provide for a new partnership of A. A. Waterman & Co.? A. I think so; I am not positive; I think it did.

RXQ1427. And you and Mr. Frazer were to drop out? A. That was my recollection.

RXQ1428. Did you agree to that at that time? A. My recol- 4227
lection is that I did, yes.

RXQ1429. And Mr. Frazer? A. Mr. Frazer agreed to it subject to seeing his attorney; that is my recollection of his statement.

RXQ1430. How about Mr. Waterman? A. I don't know. I think Mr. Waterman agreed to it too but I am not sure.

RXQ1431. Was it discussed as to who were to be partners in this concern? A. I don't remember now.

RXQ1432. Was the name of the new company discussed? A. I think several names were suggested and the Modern Pen Company among them. "Modern" was our brand under which we sold our high grade goods.

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RXQ1433. Was not the name A. A. Waterman & Co. discussed? A. I don't think it was discussed except that it was to be continued. I don't think so.

RXQ1434. Don't you remember a discussion at that time about using Mr. Waterman's name as a corporation name? A. I don't think so. It is possible, but that was always the understanding, that he was enjoined from using his name as a corporate name so I don't think any thought was given to it.

RXQ1435. Don't you remember Mr. Waterman saying that if they chose that name he had to be indemnified against any suit that might be brought against him? A. I don't remember it.

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RXQ1436. Was that injunction discussed at that time? A. I don't think so; I don't remember.

RXQ1437. I read you from an affidavit of William G. Frazer verified the 22nd of June, 1905, in the action brought by yourself and William G. Frazer against A. A. Waterman and Gratz Nathan; "And deponent further says that it is not true that a large proportion of the sales have been made through A. A. Waterman, and of which fact Chapman must have knowledge. The largest sales of said Waterman amounted to about $25,000 during any one year and the total sales for the said year amounted to substantially $157,000." Do you know whether or not that statement is correct? A. No, I don't know what Mr. Waterman's sales were in any one year. I never looked them

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up to see.

RXQ1438. I read you also from the same affidavit "That it grew from a very small beginning to a business, the largest year being about $157,000"? A. My recollection of the largest sales was $144,000, but I may be mistaken. I have not looked up those figures at all. I had not any idea you wanted it and I did not look into that.

RXQ1439. It is a fact, however, that a large proportion of the sales of the Frazer & Geyer Company were not made by Mr. Waterman? A. I think that is right, as he was only one of a good many salesmen that we had.

RXQ1440. Was not a large part of your business a mail order business? A. No, it was when we first started but after

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Mr. Waterman came with us it was most all done by salesmen on the road.

RXQ1441. Did not Mr. Chapman take a very decided stand in April, 1905, against Mr. Frazer? A. No, he simply took a stand against paying him the $50 a week that he had been getting and insisted on reducing it to $40.

RXQ1442. Was that the only thing that he was complaining about? A. That is the only thing I have any recollection of.

RXQ1443. Was Mr. Chapman a very easy man to get along with.

Objected to as immaterial.

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A. Mr. Frazer seemed to get along with him all right and seemed to be able to get all the money that he wanted out of him for three or four years.

RXQ1444. What did Mr. Waterman bring into the partnership by the way of capital—anything? A. He brought some patents and tools and different things that he brought on from Boston.

RXQ1445. Did he bring any large sum of money? A. He did not.

RXQ1446. Did he have any credit? A. Not to my knowledge.

RXQ1447. Didn't he have a record of several failures behind him? A. I never heard of his having failed. I heard of his failing two or three years ago but never previous to that.

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RXQ1448. Did not the Colonial Pen Company fail that he had been connected with, immediately prior to the making of your partnership with him? A. I think it failed some months after he made this contract with us.

RXQ1449. He never had been connected with any big success in the pen business under his own management had he? A. I don't know. He was connected with the L. E. Waterman Company for some time.

4234 *Hobart W. Geyer*

RXQ1450. He had not anything to do with the management of that company? A. Not to my knowledge. I don't know what his position was there.

RXQ1451. Did he ever claim to you that he had anything to do with the management of the L. E. Waterman Company? A. He never made any claim to me; as I have testified, I had hardly anything to do with Mr. Waterman.

RXQ1452. Was not there a rather heated discussion at this meeting in April, 1905, over Mr. Frazer's attitude toward the company? A. I don't think so at the time. I know there was considerable feeling among several of the stockholders who were not connected with the company except as stockholders, that
4235 they did not like the stand Mr. Frazer had taken. I think he said that he wanted to refer to his counsel before he decided on anything and they did not like that.

RXQ1453. Did not Mr. Chapman get very excited then? A. I don't remember.

RXQ1454. And passed a very uncomplimentary remark about Mr. Frazer and his management? A. I don't remember it.

RXQ1455. You will not swear that that did not happen? A. I don't remember anything about it.

RXQ1456. Don't you remember it was a very heated meeting that you had there? A. No, I don't remember that it was anything out of the ordinary.

RXQ1457. Don't you remember that Mr. Frazer lost his
4236 head and Mr. Chapman lost his head and there was a very heated discussion? A. No, I do not. It may have been but I don't remember it.

RXQ1458. Col. Bacon says that did not occur at that meeting. Were you at any subsequent meeting to this? Was there a meeting of the reorganization committee held soon after that? A. I think so but I am not sure. I think there was another meeting, or some recommendations made; I have forgotten whether I was at that meeting or not.

RXQ1459. Did you know anything about this $1500 and some odd that Mr. Chapman loaned Mr. Frazer? A. No, I did not know anything about it.

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RXQ1460. Did you know what that money was loaned to him for? A. I did not. I never knew anything about Mr. Frazer's private affairs at all.

RXQ1461. Did not Mr. Chapman air all this at that meeting? A. I have no recollection of any such thing.

RXQ1462. Or at any meeting? A. I have no recollection of any such thing.

RXQ1463. Don't you remember Mr. Frazer withdrawing from the meeting on account of a heated discussion? A. He may have done so but I don't remember it.

Mr. Bacon: I was present at all those meetings and there was nothing of the kind occurred at all.

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A. (Continued) Mr. Frazer may have had some hot discussion with Mr. Chapman when he was there alone but I don't remember ever having heard of any such thing.

Mr. Bacon: The discussion of which you speak was with Mr. Chapman alone on May 15th.

RXQ1464. How did it come that you brought this suit in connection with Mr. Frazer; what were the circumstances surrounding it? A. As I had been connected with Mr. Frazer for a good many years I wanted to do what I could to protect him in his position.

RXQ1465. And did you not consider at that time that the Chapmans were taking a rather high handed method to oust Mr. Frazer and yourself? A. The Chapmans had never been friendly with me and I felt that they were more or less prejudiced. I did not know where they had got their prejudice but I had always felt that from the time I first had anything to do with them.

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RXQ1466. You felt that they were trying to get control of this company for themselves? A. I could not blame them—the company losing money—I could not blame them for wanting to put it on a safe basis.

RXQ1467. What did you join Mr. Frazer in this suit for? A. As a matter of friendship for Mr. Frazer.

RXQ1468. Did you not make rather a damaging affidavit against the Chapmans in that suit? A. No, I think not. Anything that I said against them was on information and belief.

RXQ1469. Didn't you take the position that they were trying to force you and Mr. Frazer out, whether you wanted to go or not and they were doing it by whatever method came to their hands? A. I don't think so. I don't know just what the affidavit does say.

RXQ1470. Did you not take the position that Mr. Waterman was acting in conjunction with them? A. I don't remember; I don't think so.

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RXQ1471. Do you remember when Mr. Waterman stopped the mail? A. I think that was about June 6th or 8th, something like that that he stopped it.

RXQ1472. 1905? A. 1905.

RXQ1473. Do you remember when you tried to pay your attorney Mr. Straley? A. Yes.

RXQ1474. What happened then? A. We gave him a check signed by A. A. Waterman & Co.; I think it was on the Chatham Bank or Oriental Bank; and we told him at the time that we did not know whether he would collect it. He said he would take the chances on collecting it if we would give it to him and we gave it to him and payment was stopped by Mr. Waterman as I understand it.

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RXQ1475. Didn't you claim that that was done by Mr. Waterman in conjunction with the Chapmans? A. I don't know who it was done by, I don't know who did it. I may have claimed that I thought so but I did not know who did it.

RXQ1476. You knew at that time Mr. Waterman was acting with the Chapmans, didn't you? A. I think that was after June 8th, after we had been served with a notice by Mr. Waterman that the firm was dissolved by Mr. Frazer not paying his loan or having an unsatisfied judgment against him or something.

RXQ1477. You testified in your cross-examination that you closed the books of the Frazer & Geyer Company; is that true? A. When do you mean?

RXQ1478. In June, 1905? A. I think they were closed about that time. I don't think they were ever finally balanced up or anything of that sort. I think the last entries that were made were made at that time. That is what I should have said. I don't remember any entries since then.

RXQ1479. You testified in your re-direct examination that there were stockholders who didn't come into your re-organization? A. Yes, there were only two that I remember.

RXQ1480. Has there ever been any meeting of the Frazer & Geyer Company since June, 1905? A. Not to my knowledge.

RXQ1481. Ever any proceedings taken for the dissolution of that company? A. Not to my knowledge.

RXQ1483. Have there ever been any dividends declared? A. 4244
I never heard of any.

RXQ1484. Any distribution of assets? A. I don't think there were any assets. I never found any; I never heard of them.

RXQ1485. Did you ever divide with the stockholders who did not come into the reorganization, the considerations that were received for these various transfers of property? A. They did not offset the debts. The Frazer & Geyer Company were still in debt.

RXQ1486. Did you ever consult these stockholders? A. I have not, no.

RXQ1487. Was there ever any stockholders' meeting to discuss the transfer of all these assets? A. I don't know; I don't remember. I think that was left to the officers. I think the 4245
President had full authority to do that by virtue of his office.

RXQ1488. This transfer entirely divested the Frazer & Geyer Company of all its assets, did it not? A. No, its assets were used to pay off its debts, as far as they would do it.

RXQ1489. It did not have any assets remaining? A. No.

RXQ1490. Do you know of any assets that the Frazer & Geyer Company had? A. I don't know of them.

RXQ1491. You have not known of any since the Sheriff took possession? A. Not that I remember now.

RXQ1492. And you do not know of any stockholders' meeting that was ever held to authorize the transfer of all the assets

of the Frazer & Geyer Company to anybody? A. I don't remember any. I think they were all sold out by the Sheriff so that there was nothing left.

RXQ1493. Didn't you make a transfer to the Frazer & Geyer Company? A. Transfer of what?

RXQ1494. Assuming to act with Mr. Waterman as liquidating partners of A. A. Waterman & Co.? A. We transferred whatever A. A. Waterman & Co. had to offset their indebtedness to the Frazer & Geyer Company.

RXQ1495. What is the cheapest pen that you make marked A. A. Waterman & Co.? A. It retails for $1.

4247 RXQ1496. To whom do you sell this class of pen? A. We sell them to practically all of our customers, I guess. There are something like six or eight or nine thousand customers. Most all of them handle them; probably a majority any way.

RXQ1497. Don't you make a practice of selling your pens to the traveling pen salesmen? A. No, sir, we sell all of our lines to all kinds of trade, that is legitimate.

RXQ1498. Is this pen of the same quality of rubber as the other pens that you make? A. Yes, that is the same.

RXQ1499. What grade of rubber do you use in your pens? A. We use what is called Akron stock made by the American Hard Rubber Company.

RXQ1500. Are there several grades of that stock? A. That I don't know. I think there is only one.

4248 RXQ1501. Do you have to do with buying this rubber? A. I do.

RXQ1502. Do you buy the highest grade of rubber? A. I do.

RXQ1503. And do you put that grade of rubber on these dollar pens? A. I do.

RXQ1504. What is this blown rubber that you speak of? A. That we use in the cheap pens that we imprint for different people, different imprints.

RXQ1505. What grade of rubber do you use in the end joint pens that retail for $3.50? A. We use the same stock.

RXQ1506. Is that the same grade of rubber that you use in the highest grade Modern pens? A. It is.

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RXQ1507. The same degree of workmanship on it? A. Practically the same, yes.

RXQ1508. What time do you allow on your sales?

Mr. Bacon: Objected to as immaterial, calling for trade secrets, and the witness is directed not to answer. Besides defendant's counsel protests against these days of wearisome and fruitless examination, substantially all of which is irrelevant, incompetent and immaterial; and especially protests against this prolonged re-cross examination, which is not proper re-cross examination at all, but really another examination by another attorney.

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RXQ1509. You have said in your direct-examination that you never sell on consignment. I now ask you what you allow in the sale of pens to customers?

Mr. Bacon: The same objection and same direction.

RXQ1510. Do you refuse to answer?

Mr. Bacon: I direct him not to answer.

RXQ1511. Do you refuse to answer? A. I refuse to answer under direction of my counsel.

Mr. Raymond: I will certify the question.

RXQ1512. How much stock do you carry?

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Mr. Bacon: That is the same objection and the same direction; that a rival concern has no right to go into the secrets of their adversaries in this way.

RXQ1513. Do you refuse to answer? A. I do.

RXQ1514. Is it not a fact that you do not carry over $9,000 or $10,000 worth of stock at any one time in your factory?

Mr. Bacon: The same direction.

RXQ1515. Do you refuse to answer? A. Yes.

RXQ1516. In your re-direct examination you stated that the concern was prosperous now. Are you paying any dividends? A. It is not; it is reducing its mortgage.

4252 *Hobart W. Geyer*

RXQ1517. That is the mortgage to the Chapmans? A. The mortgage to the Chapmans.

RXQ1518. How much money have you paid back to the Chapmans?

Mr. Bacon: Objected to and the witness is directed not to answer. It is no business of the L. E. Waterman Company.

RXQ1519. Do you refuse to answer? A. Yes.

Mr. Watson: I will certify the question.

RXQ1520. Are you accumulating any surplus? A. We are.

4253 RXQ1521. How much surplus have you accumulated in the last two years?

Mr. Bacon: The same objection and the same direction.

RXQ1522. Do you refuse to answer? A. Yes.

Mr. Raymond: I will certify the question.

RXQ1523. What profits have you made in the last two years?

Mr. Bacon: The same objection and the same direction.

4254 RXQ1524. Do you refuse to answer? A. Yes.

Mr. Raymond: I will certify the question.

RXQ1525. You stated that no manufacturer tests his pens by machinery; how do you know? A. I said as far as my knowledge went.

RXQ1526. You have no knowledge of general pen factories, have you? A. Yes, we have men at work for us that have worked in different factories and we get reports that way.

RXQ1527. Have you ever been in any other pen factory in your life than the A. A. Waterman & Co.? A. Yes.

RXQ1528. For how long a time? A. I have been in several for perhaps half an hour at a time.

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RXQ1529. What factory have you been in? A. I have been in Heath's several times. I have been in Horn's several times some years ago—the M. T. Horn Company.

RXQ1530. How long ago? A. Probably seven or eight years ago. I have been in other factories; I don't remember them now; I did not pay much attention.

RXQ1531. Have you been in any factory during the last three years? A. I have been in Heath's several times in that time.

RXQ1532. What kind of a factory is it? A. They make rubber holders and they make mountings.

RXQ1533. Do they take the turning out of the barrel of their pen before they fit it? A. That I don't know.

RXQ1534. Do you do it? A. We do.

4256

RXQ1535. Have you ever been in the L. E. Waterman Company's factory? A. I have not.

RXQ1536. Have you ever been in the factory of any one of the large pen manufacturers of the country? A. You mean outside of our own?

RXQ1537. Yes? A. I don't think so.

RXQ1538. You never have been in the Parker factory? A. No.

RXQ1539. The Moore? A. No.

RXQ1540. The Conkling? A. No. I have been in the Davidson Rubber factory and the Sterling factory.

RXQ1541. How long ago is that? A. I think two or three years.

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RXQ1542. Have you ever been in Mabie, Todd & Bard's? A. No.

RXQ1543. That is where the Swan pens are made? A. Yes.

RXQ1544. You don't know anything about what is going on, of your own knowledge, in the big pen factories of the country? A. No, I only know what the holders are that they turn out.

RXQ1545. Have you ever attended any conventions of pen manufacturers? A. No.

RXQ1546. Have you ever put your pens in competition with any of the leading pens of the United States in exhibitions? A. I have not.

RXQ1547. Do you know whether most of the leading concerns of the country do enter their pens in these competitions? A. No, I think the L. E. Waterman Company are practically the only ones that do it to any extent.

RXQ1548. Do you know that of your own personal knowledge? A. I do not.

RXQ1549. I show you this large yellow sign, Exhibit A-63. When did you first get that sign out? A. I think about nine or ten months ago.

4259 RXQ1550. Since this suit was begun? A. I think it was before this suit.

RXQ1551. It was about the time the suit was begun? A. No, I think it was before that.

RXQ1552. Do you mark or designate any of the styles of your pens alphabetically? A. No, only that cheap blown holder.

RXQ1553. What do you call that? A. We call that Federal A.

RXQ1554. Do you know of any other pen manufacturer who designates the style of their pen alphabetically? A. I don't know of any. Our only reason for doing that was to keep the cheap holders separate from those we numbered which were

4260 our better grade.

RXQ1555. Have you any style of pen "A. A."? A. No. We had A, B, C and D which were four different styles, blown holders, but we dropped all but the A. Our other holders, we key them according to the size of the pen and the style of the holder. Our self-filling style, with a No. 2 pen, we call No. 20; the "2" designating the size of the pen and "O" the self-filling holder. The same in the middle joint, No. 22; the first "2" is the size of the pen and the second "2" is the middle joint. The 32 meaning a middle joint with a 3 pen. And the end joint it starts with No. 103; the "1" means the size of the pen and "03" the end joint holder.

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RXQ1556. Don't you know as a matter of fact that it is the custom of pen manufacturers to designate the different styles of their pens by the letters of the alphabet put on the pen? A. The style of the gold pen?

RXQ1557. No, the style of the pen? A. No. They practically all do it by numbers as far as I know.

RXQ1558. Have you never seen the alphabetical designation on the pen? A. I have not. I don't remember having seen it.

RXQ1559. Did you ever see the letter S on a pen? A. On the pen itself?

RXQ1560. No, on the holder? A. Meaning a short nib?

RXQ1561. No, meaning "safety"? A. No.

RXQ1562. Did you ever see the letters S. F.? A. No. I think 4262
I have seen S. F. in the L. E. Waterman catalogue but that is only lately.

RXQ1563. Have you never seen the letters G. M.? A. Not on the pen itself.

RXQ1564. On the holder? A. We use that on our label.

RXQ1565. Have you ever seen it on a holder? A. I have not.

RXQ1566. Have you never seen the letter D used in connection with fountain pens? A. No, sir.

RXQ1567. But you have seen various letters in the alphabet used to designate the style or kind of pen that it is? A. No, the only thing that I know about the letters designating anything is the style of point used in the factory in making the gold pens. The pen grinders know their pens by letters, the style of pen 4263
that is wanted, whether fine or medium or coarse, etc.

RXQ1568. That system is in general use is it not? A. Yes, among the pen grinders; that is all; it is something not used except in grinding the pens, telling the grinder what style of point you want.

RXQ1569. What does the word "Modern" mean? A. I am not a dictionary but I presume it means up to date.

RXQ1570. That is not a fanciful designation is it of your pens? A. That is the brand that we make them under.

RXQ1571. It is not a fanciful designation?

Mr. Bacon: I object as immaterial and I direct the witnoss not to answer as they are apparently trying to get some evidence which they will prevent the getting of a trade-mark for the name.

RXQ1572. You call your pens up to date pens don't you? A. They are right up to the minute.

RXQ1573. You consider your own pens right up to the minute? A. I certainly do.

RXQ1574. Didn't you pick out this name "Modern" to describe the up-to-dateness of your pen? A. I think Mr. Waterman picked this name out when he first came with us and I
4265 think he used it when he was in Boston but I am not sure.

RXQ1575. Don't you know that that name was transferred to the Colonial Pen Company? A. I do not.

RXQ1576. Didn't it belong to them in the first place? A. Not to my knowledge. I never had anything to do with naming it "Modern." It was done by Mr. Waterman and Frazer when he first came with us.

RXQ1577. I show you this Exhibit A63 again, the yellow sign, and ask you whether you did not get that sign out after the Chapman suit was brought against the L. E. Waterman Company in the State Court? A. I think that was started some months prior to that.

RXQ1578. Didn't you get it out afterwards? A. I don't re-
4266 member the date. It was about a year ago that we got these up.

RXQ1579. Have you distributed those widely? A. I presume we have put them out among three hundred or four hundred customers.

RXQ1580. When did you first send them to Europe? A. I don't remember. It may be two or three months ago.

RXQ1581. Very recently? A. It may have been right after we got them. I have forgotten. We have sent so many different kinds of placards that I don't keep any record of those dates. That was gotten up as a special placard for one of our customers who wanted a placard to use in a trolley car.

RXQ1582. I show you Exhibit A-64 and ask you when you first discontinued using the name A. A. Waterman & Co.

on the cuts that you sent out for your pens? A. This cut here was a special one gotten up by an advertising man and I used that while I was getting out some others. It was unintentional. It was something that was done by an advertising man and rather than to wait to get out new ones I used that.

RXQ1583. I show you Plaintiff's Exhibit 139 and ask you to look at the cut there and see whether you find the name A. A. Waterman & Co. on the cut. It is pretty fine but you saw it the other day? A. I cannot see it on there.

RXQ1584. You cannot see A. A. Waterman & Co. on there? A. I never got up any cut like that. I don't know when it was done but the chances are, it is so small they could not get any lettering on it.

4268

RXQ1585. Is it not a fact that you have been leaving the name A. A. Waterman & Co. off of the cut? A. No, this cut in this exhibit is the only one that I know of that has not had the name on it and where that other cut came from I don't know.

RXQ1586. What papers have you advertised in in the last three years?

Mr. Bacon: Objected to as immaterial and the witness is directed not to answer. There must be some limit to this tiresome examination.

RXQ1587. Did you not testify on your direct-examination that you had been advertising extensively? A. Yes, I think so.

4269

RXQ1588. How much have you spent in advertising in the last three years?

Mr. Bacon: Objected to as immaterial and the witness is directed not to answer.

RXQ1589. Do you refuse to answer? A. I do.

Mr. Raymond: I will certify the question.

RXQ1590. In what papers have you advertised?

Mr. Bacon: You may answer that if you can remember.

A. I don't keep any list of them. We have advertised in the New York Evening Sun last December, one issue. We advertised in two or three lawyers' magazines and several medical magazines. I have forgotten the names. I don't remember. I would have to look that up. I cannot keep track of those things.

RXQ1591. Have you ever advertised in Munsey's? A. I do not advertise in the so-called popular magazines.

RXQ1592. Have you for the last two years? A. Not for the last two years; I think three years ago—before that I advertised in them.

RXQ1593. You heard the testimony of Mr. Bartlett didn't you in this case? A. Yes.

4271 RXQ1594. Did you hear Mr. Bartlett state that you sold these pens as a non-advertised pen? A. As a what?

RXQ1595. As a non-advertised pen? A. I don't know, I don't remember. He may have said so. I did not catch it if he did.

RXQ1596. Do you advertise in any of the trade journals? A. I have just begun advertising in one of the druggists' papers and I have had an ad in the American Druggists Syndicate paper for several months. I don't know whether that is a paper or a catalogue or what they do call it.

RXQ1597. Do you ever advertise in any of the stationery trade papers? A. No, not for some years.

RXQ1598. Why don't you? A. I testified yesterday they
4272 object to taking our ad until this litigation is settled.

RXQ1599. Was that the case before this litigation was commenced? A. I got the information from either Mr. Frazer or Mr. Martling, I have forgotten which, that they wanted to drop our ads some years ago because the L. E. Waterman Company who were large advertisers stated that if they kept our ad in they would drop their ad out of their paper.

Mr. Raymond: I move to strike out the answer as incompetent on its face and as hearsay.

Mr. Bacon: I object.

4273

RXQ1600. You never had any conference personally with those running the stationery trade journals did you? A. I did not. I tried to give you the reason as you asked for it.

RXQ1601. Have you ever tried to put any ad in any of the stationery trade journals? A. I instructed our advertising men to do it, within three or four months. He brought back the report just as I have stated it that they preferred to wait until the litigation was settled.

RXQ1602. What style of an ad did you instruct them to put in? A. I don't think a copy of the ad had been made up. We were to advertise our automatic self-filled fountain pen, with "Modern Pen Company, sole selling agent for A. A. Waterman & Co." That was practically the part that they objected to, the only part.

4274

RXQ1603. What part was that? A. That we were agents for A. A. Waterman & Co. They did not want to carry the two Waterman ads until the case was settled. They did not want to get into any trouble, as I understood it, through threats that had been made by the L. E. Waterman Company representative.

Mr. Raymond: I move to strike out the last part of the answer as incompetent and heasay and not responsive.

Mr. Bacon: It is objected to.

RXQ1604. What profit has the Modern Pen Company made during this last year?

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Mr. Bacon: Objected to as immaterial and the witness is directed not to answer.

A. I refuse to answer.

Mr. Raymond: I will certify the question.

RXQ1605. What profits have they made during the last two years?

Mr. Bacon: The same objection and direction.

A. I refuse to answer.

Mr. Raymond: I will certify the question.

4276 *Hobart W. Geyer*

RXQ1606. What profits have they made since you were manager?

Mr. Bacon: Same objection and direction.

A. I refuse to answer.

Mr. Raymond: I will certify the question.

RXQ1607. You testified in your re-direct examination that since you became manager the concern has been prosperous. What do you mean by prosperous? A. I mean that we have made satisfactory profits and conducted a satisfactory business.

RXQ1608. What are those profits?

4277

Mr. Bacon: The same objection and direction. We are not giving our secrets to our adversaries.

A. I refuse to answer.

Mr. Raymond: I will certify the question.

RXQ1609. How much money have the Chapmans at present invested in A. A. Waterman & Co.?

Mr. Bacon: Objected to as immaterial and the witness is directed not to answer.

A. I refuse to answer.

Mr. Raymond: I will certify the question.

4278

RXQ1610. As a matter of fact have they any money in A. A. Waterman & Co.?

Mr. Bacon: The same objection and direction.

A. I refuse to answer.

Mr. Raymond: I will certify the question.

RXQ1611. Has the amount of capital of A. A. Waterman & Company changed from the time when you were a partner?

Mr. Bacon: The same objection and direction. Besides, this witness is not a member of A. A. Waterman & Co. and cannot know.

4279

A. I refuse to answer.

Mr. Raymond: I will certify the question.

RXQ1612. Are you the general manager of the A. A. Waterman & Co.? A. I am manager of their manufacturing interests, yes.

RXQ1613. Do you keep the books? A. No.

RXQ1614. Have you not charge of the books? A. General charge, yes.

RXQ1615. They are kept under your supervision? A. Yes.

RXQ1616. That is all in your department? A. That is all in the A. A. Waterman & Company, yes. I have charge of everything, general supervision of everything.

4280

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ1617. When A. A. Waterman came into the original firm with you and Mr. Frazer did he not bring his line of customers with him? A. Yes.

RDQ1618. And did he not produce substantially all the trade that A. A. Waterman & Co. had? A. Yes, it was through his ideas, as I understood it.

RDQ1619. And all of the pens that they sold were sold through him were they not, in the beginning? A. Right after he came with us, yes.

RDQ1620. In other words, he brought the entire good will and all the customers that he had before into this new firm in 1901?

4281

Mr. Raymond: I object to that. There is nothing whatever to show that any good will was brought. The witness cannot testify as to that. Good will is a question of record evidence.

A. Yes.

RDQ1621. Had A. A. Waterman ever failed in business before 1901? A. I never heard of his having failed.

4282 *Hobart W. Geyer*

RDQ1622. Or before July 1, 1906? A. I never heard of his having failed. I always heard him take pride in the fact that he never had.

Mr. Watson: I move to strike out the answer as incompetent and hearsay.

RDQ1623. A. A. Waterman & Company that preceded your firm were manufacturers were they not? A. Yes.

RDQ1624. And the Colonial Pen Company was their selling agent?

Mr. Watson: I move to strike out all of the last two
4283 answers as the witness has previously said that he knew nothing about it, never had seen their factory and knew nothing about their business.

A. Yes.

RDQ1625. Is it not a fact that A. A. Waterman dictated the policy of the original firm of A. A. Waterman & Co.?

Mr. Watson: Objected to as highly improper in form and leading.

A. I think he did wholly after he came with us.

RDQ1626. And he dictated the styles of pens, and the method of manufacture and the patents under which they should be manufactured and everything of that character? A. Yes.

4284 RDQ1627. Mr. Waterman was an inventor was he not of pens? A. Yes.

RDQ1628. Had taken out several patents? A. Yes.

RDQ1629. And those were brought into the new firm? A. Yes.

RDQ1630. And patents taken out since in Mr. Stone's name and other people's names were really directed by him?

Mr. Watson: Objected to as highly incomeptent.

A. That is my understanding.

RDQ1631. When the note already in evidence for $10,000, given by Frazer & Geyer Company to the Chapman estate and

4285

endorsed by A. A. Waterman & Co., was given was not that money advanced by the estate to a bank to take up a loan of about $10,000 where they were paying some twelve per cent interest?

Mr. Watson: Objected to as there is no such note in evidence.

A. Yes, that was a loan that we had at the Stuyvesant Bank.

Mr. Watson: I move to strike out the answer as incompetent. There is no such note in evidence.

RDQ1632. Do you know as a fact that the Chapman estate advanced $20,000 to the Frazer & Geyer Company to take the place of the loan that Frazer & Geyer had with the Stuyvesant Bank whereon they were paying one per cent a month? 4286

Mr. Watson: Objected to as immaterial.

A. Yes.

RDQ1633. Mr. I. E. Chapman and William L. Chapman are actively engaged as members of the Merritt & Chapman Derrick & Wrecking Company? A. Yes.

RDQ1634. That is their business? A. Yes.

RDQ1635. And not the pen business? A. No.

RDQ1636. And they don't pretend to have any active participation in the pen business, except the financial end of it? A. That is right.

4287

RDQ1637. Mr. I. E. Chapman suffers from a very severe nervous affliction does he not? A. Yes.

RDQ1638. Which incapacitates him in part from business? A. Yes, I think so. It is called St. Vitus Dance; it certainly troubles him a good deal.

RDQ1639. At the present time you represent the Chapmans in looking after their interest in A. A. Waterman & Co.? A. Yes.

RDQ1640. The manufacturing end of the business? A. Yes.

RDQ1641. And all the time that A. A. Waterman was connected with A. A. Waterman & Co. or the Frazer & Geyer Company or the Modern Pen Company, as an officer and director did

4288 *Hobart W. Geyer*

not those firms and corporations utilize his patents, his business experience and the customers in the pen trade that he controlled? A. Yes.

RDQ1642. And he had a great many customers that were personal to himself and went with him when he went out of the business?

Mr. Watson: Objected to as leading and incompetent.

A. Yes.

RDQ1643. During the early days of the Frazer & Geyer Company Mr. Frazer had the confidence of Mr. Isaac E. Chapman did he not and you did not have? A. Yes.

4289 RDQ1644. The rubber from which you make your rubber holders is bought from whom? A. The American Hard Rubber Company.

RDQ1645. Is it the very best rubber that they manufacture? A. Yes.

RDQ1646. Can any better rubber be obtained in the market?

Mr. Watson: Objected to as immaterial and incompetent and wholly beyond the knowledge of this witness.

A. I don't know of any better.

RDQ1647. Has it the reputation of being the very best?

Mr. Watson: The same objections.

4290 A. Yes.

Mr. Bacon: I offer in evidence the minutes of the special meeting of the stockholders of the Frazer & Geyer Company dated April 19, 1905; and of a meeting of the reorganization committee dated April 26, 1905.

Marked Exhibit A-65.

Also a letter from A. A. Waterman to the Oriental Bank dated June 14, 1905.

Marked Exhibit A-66.

Counsel for plaintiff objects to all three of the above offers as incompetent, irrelevant and immaterial.

*RE-CROSS EXAMINATION by Mr. Raymond:*

RXQ1648. Do you know who drew these minutes that are put in evidence as A-65? A. No, I do not, I think Robert Elliott but I am not sure.

RXQ1649. He was Mr. Chapman's secretary was he not? A. He is one of the stenographers down there. I don't know whether he acts as secretary or not.

RXQ1650. Any evidence of irritability would not appear in these minutes would it? A. The minutes are supposed to tell what occurs.

RXQ1650a. I read you from the minutes of the meeting of April 19, 1905: "Mr. I. E. Chapman then spoke about the losses 4292
of the company during the last two or three years, its present poor condition, the differences existing between him and Mr. Frazer and explained why the business needed more cash." Does that refresh your recollection as to what occurred at that meeting? A. I think there was a simple statement of facts. That is all I remember.

RXQ1651. Were these differences between Mr. Frazer and I. E. Chapman put in rather strong language by Mr. Chapman? A. I don't think so. I don't recall any strong language.

RXQ1652. I read you further: "Mr. I. E. Chapman then stated that endeavoring to carry on a larger business without sufficient capital and employing inexperienced salesmen had been among the things which caused that loss." Does that re- 4293
fresh your recollection as to what occurred at that meeting? A. There was nothing out of the ordinary occurred. It was a simple statement of facts and then the thing was referred to a committee to report and make a recommendation.

RXQ1653. Is not that the fact, as to what caused the loss? A. I don't remember any inexperienced salesmen although we may have had them.

RXQ1654. Don't you know as matter of fact that the loss was caused by Mr. Waterman trying to branch out the business to too large an extent, and giving too many cases to customers, etc.? A. No, sir. I have been giving more cases since I took

4294 *Hobart W. Geyer*

charge than he gave during that period and we have made money instead of losing it.

RXQ1655. Were you present at that meeting of April 26, 1905, of the reorganization committee? A. I have forgotten whether I was there or not.

RXQ1656. Do you remember this: "1. That in order to give confidence to the stockholders something be inserted in the report to show that during the last few months the company has been holding its own; that radical and economical changes have been made during this time." Do you remember that? A. That was a report made by Mr. Frazer.

4295 RXQ1657. This is the report of the meeting of the reorganization committee? A. I don't remember that.

RXQ1658. Was that true that for a few months prior to April 26, 1905, the company had been holding its own? A. I think not. I will have to look up the records to see.

RXQ1659. Do you remember this: "2. That the name of the new company be left to the Board of Directors"? A. I don't remember. I don't remember whether I was at that meeting.

RXQ1660. Don't you remember a discussion as to whether or not you were going to make the company's name the "A. A. Waterman Pen Company"? A. I never heard that discussed. I never knew that was brought up at all.

RXQ1661. Didn't you hear it discussed as to whether or not you could use the name A. A. Waterman in a corporate name?

4296 A. No, there was no room for discussion. The decree was as clear as could be. A. A. Waterman could not use his name in a corporation.

RXQ1662. Don't you remember that I. E. Chapman said he was going to get advice on that subject and use the name if he could? A. No.

RXQ1663. Was it not discussed as to the state in which you were to incorporate? A. Not in my presence, no. I never heard of it.

RXQ1664. Didn't you hear discussion to the effect that they wanted to incorporate under some other law than the State of New York with the name A. A. Waterman in a corporate form? A. No, sir, I never heard of it.

4297

RXQ1665. What patents do you use today that were gotten out by A. A. Waterman? A. We use the reed feed. I don't remember what others he got out personally.

RXQ1666. Was that a patent of A. A. Waterman? A. Yes, that was a patent of A. A. Waterman. That is my recollection.

RXQ1667. Who else uses that? A. The Sterling Fountain Pen Company use it.

RXQ1668. Does the Boston Safety Fountain Pen Company use it? A. Not to my knowledge. Possibly they do.

RXQ1669. Does W. N. Lancaster use it? A. Lancaster uses it, yes, at times. Lancaster uses it through having bought out the Colonial Pen Company's assets as I remember.

4298

RXQ1670. Does the Colonial Pen Company have a right to use it? A. That I don't know.

RXQ1671. Is that the only patent that you use today gotten out by A. A. Waterman? A. I don't know. I have not looked through the patents for years. I don't know just which ones he did get out that we use.

RXQ1672. When the payment of that $250 check was stopped by A. A. Waterman was not a bond required? A. I don't know. I never knew anything about the particulars of it at all.

RXQ1673. You don't know whether I. E. Chapman went on that bond? A. I don't know anything about it. I was on the other side of the fence at that time.

Recess.

4299

4300 *Josephine Dooley*

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
4301 Defendant.

Met pursuant to notice at the office of Alexander S. Bacon, 37 Liberty Street, New York, April 17, 1911, at 10:30 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Complainant.

Alexander S. Bacon, for Defendant.

JOSEPHINE DOOLEY, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

*Direct-examination by Mr. Bacon:*

4302 Q1. Please state your name, residence and business? A. Josephine Dooley; 10 Bromfield Street, Boston; business, fountain pens.

Q2. How long have you been in the fountain pen business? A. About nine years and a half.

Q3. Do you deal in pens exclusively? A. Yes.

Q4. Do you also repair pens? A. Yes.

Q5. How long have you been repairing pens? A. Nine years.

Q6. Do you repair pens of all makes? A. Yes, any kind.

Q7. With whom are you connected in business in Boston? A. Ailman & Son.

4303

Q8. Have they been at 10 Bromfield Street during the last nine years that you have been with them? A. Yes.

Q9. And they have been in the same location for how many years? A. About forty-five years on that street.

Q10. And from what you have learned from them, how long have they been in that exact location?

Objected to as incompetent.

A. Fifteen years; fifteen years in that exact store.

Q11. Have L. E. Waterman Company been at 8 School Street all the nine years that you have been there? A. No.

Q12. They have moved? A. Yes, since we have been there.

4304

Q13. Does your business as a repairer of pens bring you in contact with all kinds of fountain pens? A. Yes.

Q14. Yours is a very large concern? A. Yes, it is considered a big concern.

Q15. One of the largest in Boston? A. Yes.

Q16. Were you employed by anybody before you were employed by Ailman & Son? A. Yes, the Colonial Pen Company.

Q17. How long were you with them? A. Six months.

Q18. Were you ever with the L. E. Waterman Company? A. No.

Q19. Does your experience as an expert repairer of pens and assembler of pens permit you to have a decided opinion as to the intrinsic value of the different makes of pens?

4305

Mr. Watson: Objected to as incompetent and without proper foundation; no proper foundation being shown that this witness has ever had any practical experience in repairing pens or knows anything about the manufacture or is a competent witness on the subject-matter inquired about.

A. Yes.

Q20. During these nine years? A. Nine years and a half.

Q21. Have you repaired all sorts of pens? A. Yes.

Q22. Many L. E. Waterman Company pens? A. Yes, any number of them.

4306 *Josephine Dooley*

Q23. In that length of time would it run into the thousands? A. Yes.

Q24. Will you state in your own words what is your opinion of the different makes of L. E. Waterman Company pens and A. A. Waterman & Company pens, comparing them, grade for grade, and giving the reasons for your opinion?

Mr. Watson: Objected to as without proper foundation; the witness showing that she has never manufactured goods and has no practical experience to entitle her to give an expert opinion.

4307 A. What do you mean—the point of the pen?

Q25. Yes? A. The L. E. Waterman pen opens where the finger grasps it, as a joint; while the A. A. Waterman pens have a joint in the center; and the self-filling pen has no joint, making it a better pen. Is that all you want me to say?

Q26. No, I want you to go on and tell the difference. What have you found to be the trouble generally with L. E. Waterman pens? A. That they leak at the joint.

Q27. They screw on at the joint? A. Yes.

Q28. And after awhile the screw gets loose? A. Yes, the threads wear.

Q29. What is the universal complaint of those pens that have come in to you?

4308 Mr. Watson: Objected to as highly leading and improper in form, and there is no evidence as to the facts stated in the question.

Q30. Of the thousands of L. E. Waterman pens that have come to you to be repaired what, generally, has been the trouble with them?

Same objections.

A. They flow too freely when they are nearly empty and they leak at the joint.

Q31. Is that true of the middle joint A. A. Waterman pen? A. No.

4309

Q32. Is it true at all of the A. A. Waterman self-fillers? A. No; that is the better one of the three.

Q33. In comparing the different makes of pens as they have come under your observation, which, in your opinión, is the best pen that is manfactured? A. The A. A. Waterman self-filler.

Q34. Do you speak of this merely from its method of construction, or from its workmanship, or both?

Mr. Watson: Objected to as without proper foundation; and this witness is not shown to have any knowledge that would entitle her to testify as an expert on the matters inquired about.

A. Both.

4310

Q35. Do you find that the A. A. Waterman middle joint pen is weak at the middle joint? A. No.

Q36. What have you to say, if anything, in relation to the feeds of the two different pens? A. You mean the difference in the two?

Q37. The difference in the feed? Do you know anything about the reed feed? A. Yes; that checks the flow of the ink.

Q38. Is that considered a good feed in the trade? A. Yes.

Q39. Is it considered the best? A. I don't find trouble in the feed at all, in either case.

Q40. You don't find any trouble either in the A. A. Waterman or the others? A. It is in the joint that I find the trouble.

Q41. If an L. E. Waterman pen comes into your shop to be repaired, do you repair it? A. If I can, yes. 4311

Q42. There are some things sometimes that are so broken or out of repair that they cannot be repaired? A. I don't repair gold pens, but I straighten and clean and adjust them.

Q43. If there is anything that you can do with the pen do you do it? A. I do it. I straighten it and clean it and smooth it.

Q44. If there is nothing that you can do with the pen, what do you do? A. Send it to 8 School Street.

Q45. Do you have any complaint as to what is done with A. A. Waterman pens at 8 School Street? A. They don't reach us.

4312 *Josephine Dooley*

Q46. What do you mean by that? A. The L. E. Waterman Company people over there say we are out of business and they don't know where they could find us.

Mr. Watson: I object to that and move to strike it out as incompetent and immaterial.

Q47. Is that the universal complaint, that they are very disagreeable?

Same objections.

A. Yes.

Q48. What do they say about the A. A. Waterman Company
4313 pens? A. That they are an imitation of the real Waterman; they are not a regular Waterman—genuine; entirely indifferent as to who they are.

Q49. How often do you get such complaints as that? A. I should say two or three times a week on an average.

*CROSS-EXAMINATION by Mr. Watson:*

XQ50. Who paid you for coming on here? A. I have not got paid yet.

XQ51. How much do you expect to get? A. I don't know. I might get my railroad fare, but that is all.

XQ52. When did you come on? A. Last night.

4314 XQ53. On the night train? A. No.

XQ54. Yesterday afternoon? A. Yes, one o'clock.

XQ55. No one gave you money to come on with? A. No.

XQ56. You came with your own money? A. Yes.

XQ57. No one has promised you your railroad fare or anything else? A. No.

XQ58. Then you came on here as a voluntary act? A. For Ailman & Son.

XQ59. Did they ask you to come on? A. Yes, they told me to come on.

XQ60. Did they tell you they were going to pay you? A. They will, yes.

4315

XQ61. Pay your expenses? A. Yes.

XQ62. What are they going to give you? A. What it costs to come on here.

XQ63. Didn't they advance you any money when you started? A. No, I used my own money.

XQ64. You are somewhat of a philanthropist? A. I know I will get it back.

XQ65. What people have told you that they have said that L. E. Waterman Company at School Street that A. A. Waterman & Co. were out of business? A. Different customers.

XQ66. Who are they? A. Mr. Bowman.

XQ67. Where does he live? A. I cannot tell you; on Milk Street.

4316

XQ68. What is his business? A. I could not tell you his business. I could give you the right number of the building.

XQ69. What is the right number? A. He is one that has come in this week. The number is 232 Milk Street, A. L. Bowman.

XQ70. What is his business? A. I could not tell you his business.

XQ71. What did he say? A. He took a pen in there to be repaired, to put a new pin in the button on the end and they charged him seventy-five cents for it, and the pin fell out and he put in a common pin himself. Later on he dropped his pen and broke it, bent it up, and he went in there again to have it repaired and they told him that they had never repaired other makes of pens since the time he was in there. He happened to come up Bromfield Street and saw the A. A. Waterman sign and he came in, asked me if I could fix that pen and I said yes. I told him if he came to us we would only charge twenty-five cents for fixing the pen. He was quite put out about it and told me the story.

4317

XQ72. He did not tell you that A. A. Waterman was out of business, did he? A. They told him that they did not know where we were; that we were in New York and they could fix it, and they undertook to fix it.

4318

XQ73. Then your statement that he said that A. A. Waterman & Co. were out of business is not correct? A. No they are not out of business.

XQ74. He said they were in New York, didn't he, out of business in Boston; is not that so? A. We represent A. A. Waterman & Co. in Boston.

XQ75. Are you their agents? A. We sell their pens.

XQ76. Are you their agents? A. I think it is agent.

XQ77. Are you the legal representative of that concern? A. No.

XQ78. Do you get their mail in Boston? A. Sometimes we open the Boston mail.

4319 XQ79. Letters addressed to A. A. Waterman & Co., Boston, you open? A. We have permission to.

XQ80. You have an order from the Post Office to deliver that mail to you? A. Yes, there was an order.

XQ81. It still holds good? A. Yes, it still holds good. I still open it.

XQ82. Who was the order signed by? A. The head one in this concern here. I couldn't tell you.

XQ83. When was it given? A. Five or six years ago.

XQ84. Does the company here in New York know that you do that? A. Yes.

XQ85. And have known it right along? A. Yes.

XQ86. And approved it? A. Yes.

4320 XQ87. Has A. A. Waterman & Co. got any place of business in Boston? A. Do you mean offices?

XQ88. Any place of business? A. No.

XQ89. Would it be true to say that they had no place of business in Boston? A. No, I think we represent them.

XQ90. You think you are that "place of business"? A. Yes, we have the retail branch on our signs.

XQ91. And then you think if a Waterman representative at 8 School Street said that A. A. Waterman & Company was in New York and did not have an office in Boston, that they would be telling what was not so? A. Yes, they should send them to us.

XQ92. Because you are A. A. Waterman & Co.? A. Yes.

XQ93. That is the only thing that Mr. Bowman said, that they said at 8 School Street that the A. A. Waterman Company's business was in New York, and they did not have any Boston office? A. They did not have any Boston office.

XQ94. But they had a place in New York? A. I don't know that they said that they did not have a place in New York, but I know they said they did not have a place in Boston.

XQ95. And they were out of business in Boston as far as they knew? A. Yes.

XQ96. They did not say they were out of business in New York, did they? A. No.

4322

XQ97. You never heard anybody say that the L. E. Waterman Company at 8 School Street told that A. A. Waterman & Co. were out of business in New York, did you? A. No.

XQ98. When were you with the Colonial Pen Company? A. About nine years and a half.

XQ99. The Colonial Pen Company? A. Yes, Colonial.

XQ100. You have been with the Colonial Pen Company nine years and a half? A. Yes, nine years and a half ago.

XQ101. How long were you with them? A. About six months.

XQ102. What year was that? A. 1902 I came to them. That would make it 1901.

XQ103. Were you there when the Colonial Pen Company failed? A. Yes.

4323

XQ104. And they finally closed up? A. Yes.

XQ105. And they sold out to Mr. Lancaster? A. Yes, I left just before they sold out to him.

XQ106. That was the Colonial Fountain Pen Company? A. Colonial Pen Company, they styled them.

XQ107. Not the Colonial Fountain Pen Company? A. No.

XQ108. Who was the manager of the Colonial Pen Company when you left? A. Mr. Chaplin. I worked under him.

XQ109. Was he still there when you left? A. No, he left about the same time.

4324

XQ110. You don't know who succeeded him, do you? A. Mr. Eberstein.

XQ111. Did you work under Eberstein at all? A. Yes, for a short time.

XQ112. How long? A. About a week or so.

XQ113. Have you ever had anything to do with the manufacture of fountain pens? A. No, only just for what was in the factory; we had a factory.

XQ114. And you worked in the factory also? A. Yes, I used to go down in the factory.

XQ115. You did not work in the office? A. No, I went to the factory in the mornings to learn how to take pens apart and straighten them and then I worked in the office. I wanted to learn the business.

4325

XQ116. You never did anything but just repair? A. No, sir.

XQ117. Never learned anything about manufacturing pens? A. No, just repairing.

XQ118. Do you sell any L. E. Waterman Company pens in your store? A. No.

XQ119. Never did? A. No.

XQ120. You never have sold any? A. No.

XQ121. Never handled them at all? A. No. I have handled them at the Harvard Co-operative Society, in Cambridge.

XQ122. When was that? A. During the opening of the college.

4326

XQ123. When, what year? A. Probably six years ago; I am not sure.

XQ124. How long? A. Just for a couple of weeks.

XQ125. That is the only time? A. Yes, twice, different seasons.

XQ126. Who were you working for then? A. For the A. A. Waterman Company.

XQ127. You were working for A. A. Waterman & Co.? A. I went there to help.

XQ128. You were selling A. A. Waterman & Co. pens? A. No, I didn't sell any pens there. There happened to be some L. E. Waterman pens there to sell. I would sell any makes that were there.

XQ129. Do you sell in the store at Ailman's any A. A. Waterman & Co. goods? A. Yes.

XQ130. That have a joint near the end? A. Yes, we sell the Lincoln.

XQ131. Is that the only kind of pen that you have that has a joint near the end? A. That is the only kind.

XQ132. They are all Lincolns, are they? A. All that we sell with the end joint.

XQ133. All stamped Lincoln? A. All stamped A. A. Waterman & Co. now, but they used to be stamped Lincoln.

XQ134. How long have you been selling those pens that have the joint near the finger? A. Ever since I went in there we had some. 4328

XQ135. You have been selling them right along all the time? A. Right along.

XQ136. You never have any trouble with those leaking at the joint? A. Yes, we do not guarantee them.

XQ137. Do they leak under the joint? A. They are apt to.

XQ138. What is the price of those pens? A. We sell them just the one size, $1.

XQ139. That is the only style you carry? A. That is the only style we carry.

XQ140. When you were with the Colonial Pen Company in 1902— A. 1901, I think it must be.

XQ141. 1901—did you sell middle joint pens, the same as you have been talking about here now? A. Yes. 4329

XQ142. You used to sell boxes like the one I now show you (showing witness a box)? A. Yes.

XQ143. That is the same kind of box you used? A. It had "& Co." on it—"A. A. Waterman & Co."

XQ144. The rest of the box is the same as the one I show you? A. Yes, just the same. I never saw a box like that (indicating).

XQ145. Do you know W. B. Clark & Company of Boston? A. Yes, booksellers.

XQ146. Stationers? A. Yes.

XQ147. Do they sell fountain pens? A. Yes.

4330 *Josephine Dooley*

XQ148. A pretty large store, is it not? A. Yes.

XQ149. As large as your store? A. Bigger.

XQ150. A good deal bigger? A. They don't sell as many pens as we do.

XQ151. How do you know? A. I know the clerk up there. I do quite a little of their repairing.

XQ152. You never worked for them? A. No.

XQ153. You don't know anything about their business except what the clerk tells you? A. That is all.

XQ154. But you know you sell more fountain pens than they do? A. I think I do.

4331 XQ155. You are prepared to swear that you sell more fountain pens than they do? A. No, I would not say that.

XQ156. You remember you are under oath here and whatever you say is supposed to be truthful? A. Yes.

XQ157. Don't you want to withdraw that statement that you sell more fountain pens than they do? A. I don't know. I don't know just how many.

XQ158. Don't you think that is the proper answer to make, that you don't know? A. I sell as many anyway.

XQ159. Do you know that? A. Yes.

XQ160. You are ready to swear that you sell as many as they do? A. Yes.

XQ161. You don't know how many they sell? A. I don't know how many, but I imagine.

4332 XQ162. You imagine? A. Yes.

XQ163. You don't know anything about it? A. No, I would not say.

XQ164. Do you know the Hobson-Warren Company of Boston? A. Yes.

XQ165. That store is in a prominent place in Boston? A. Yes. They failed up.

XQ166. Where was their store? A. Washington Street.

XQ167. They are not doing any business at all now? A. They are out of business.

XQ168. Is Franklin Street near your store? A. Yes, quite near.

4333

XQ169. Are there any large dealers of fountain pens on Franklin Street? A. Yes.

XQ170. Name them? A. Thorpe Martin, Samuel Ward and Fairbanks.

XQ171. Does Samuel Ward carry Waterman Ideal Fountain Pens? A. Yes.

XQ172. It is a pretty large store is it? A. Quite a big store.

XQ173. Do you carry more pens than they do? A. No, I would not say any more, but as many.

XQ174. Do you know how many they sell? A. No, I would not be apt to know that.

XQ175. Then you don't know whether you sell as many or not, do you? A. I think I do.

4334

XQ176. But you don't know anything about it? A. No, I don't know.

XQ177. Fairbanks—do they sell Waterman Ideal Fountain Pens? A. Yes.

XQ178. They are a big store too? A. No, not very large.

XQ179. Jordan & Marsh sell Waterman Ideal Fountain Pens? A. Yes, they sell all makes down there.

XQ180. What makes do they sell? A. They used to handle the Colonial quite a little.

XQ181. Do you know whether they sell any other pen except the Waterman Ideal Fountain Pen? A. I don't know now. I wouldn't say.

XQ182. Is that one of the largest department stores in Boston? A. Yes, but their fountain pen department is not a large department.

4335

XQ183. How do you know? A. I have been down there several times.

XQ184. How many pens do they display in their stock? A. I should think they had a gross.

XQ185. You have spoken about the quality of the Waterman Ideal Fountain Pen as compared with the A. A. Waterman & Co. Do you know anything about the class of rubber that is in these pens? A. No, I would not.

4336

XQ186. Do you know anything about the quality of gold pens in these different fountain pens? A. I know they all are about fourteen karat.

XQ187. You know nothing about their manufacture? A. I have seen them made.

XQ188. You don't know anything about the grades? A. I have seen it in the factory.

XQ189. You don't know anything about the iridium? A. I have seen the iridium and seen them put it on.

XQ190. Are you able to tell the difference in the grades of iridium? A. No.

XQ191. You don't know anything about that? A. No.

4337

XQ192. I think you testified that you found no difficulty with the L. E. Waterman Company feeds? A. No.

XQ193. That they fed all right? A. Yes.

XQ194. What is the general reputation of the L. E. Waterman Company Ideal Fountain Pen in the market? A. It is a pretty well advertised pen. It is very well known.

XQ195. Very widely advertised? A. Yes.

XQ196. Very well known? A. Yes.

XQ197. It is considered the standard upon the market? A. It is considered one of the standard pens, yes.

XQ198. And has been ever since you have known anything about fountain pens? When you were with the Colonial Pen Company it was then considered the standard pen in the market,

4338

was it not? A. Yes, they still have them there.

XQ199. I say the Waterman Ideal Fountain Pen was considered the standard pen on the market when you were with the Colonial Pen Company? A. Yes.

XQ200. And always has been ever since? A. Yes.

XQ201. Carried by the best stores in the larger towns? A. Yes, some of them.

XQ202. What is the name that people speak of the L. E. Waterman Company pens usually? A. The Waterman Ideal Pen.

XQ203. It is usually called the Waterman pen is it? A. Waterman Ideal.

XQ204. Never called Waterman's pen? A. Very seldom.

XQ205. Never referred to as Waterman pens? A. No, they come into my place for a self-filling pen.

XQ206. Did you ever have any of the middle joint pens break in the center? A. Not often.

XQ207. You do not have much trouble with those? A. No, not often. They are better now than what they used to be.

XQ208. They used to make those and sell them when you were with the Colonial Pen Company? A. Yes, I sold the self-filling pen there too.

XQ209. Do you know whether the L. E. Waterman Company sell a self-filling pen? A. Yes. 4340

XQ210. They do? A. Yes.

XQ211. They sell a great many different styles of pens? A. Yes.

XQ212. Your business at Ailman's is mostly an optical business is it not? A. Yes, we run a fountain pen department though with them.

XQ213. That is simply a counter in a very big optical store? A. It is quite an important part.

XQ214. It is a counter in a big optical store that sell A. A. Waterman & Co. pens, field glasses and all kinds of optical instruments? A. Yes, it is an optical store but the front of the store is taken up with fountain pens.

XQ215. Just one side? A. It is only a one side store in all. 4341

XQ216. One side of a narrow store? A. It is quite a big store.

XQ217. It is not a narrow store, with a counter on only one side? A. Yes.

XQ218. Only room for a counter on one side? A. With chairs for people to sit on the other side.

XQ219. But there is no counter on the opposite side? A. No.

XQ220. There is not room enough? A. No.

XQ221. How many repairs do you get of the A. A. Waterman & Co. pens a week? A. Sometimes we get as many as twenty

to twenty-five, sometimes thirty a day; that is when we are terribly busy.

XQ222. How much do you get on an average? A. I should say a good average would be fifteen a day.

XQ223. That is A. A. Waterman pens? A. No.

XQ224. All pens? A. All kinds.

XQ225. All kinds? A. Yes.

XQ226. How many of those are A. A. Waterman? A. Naturally the big part of them are A. A. Waterman because it is an A. A. Waterman store.

XQ227. What do you mean by a big part? A. Say ten of them any way.

4343 XQ228. Ten out of fifteen? A. No, there would not be as many as that; it might be eight.

XQ229. Eight out of fifteen? A. Yes.

XQ230. What was generally the matter with these pens? A. Sometimes they need cleaning, sometimes they would break the pen; sometimes they would bend it; sometimes they need tightening up; sometimes the cap would be broken—what would be the matter with any pen.

XQ231. Did you ever have any trouble with replacing the sack? A. No, the sacks last.

XQ232. You don't replace sacks? A. No. Of course we do replace them but not every day.

XQ233. Do you ever have pens come in to you with the knob
4344 at the end broken off? A. Yes.

XQ234. Quite frequently? A. No, not particularly often.

XQ235. How many of those in a day do you have? A. We would not have one a day. We would not have two a week.

XQ236. How many of these fifteen pens on an average that you receive a day for repair are L. E. Waterman Company goods? A. Four any way; four or five.

XQ237. What is the matter with those pens? A. Leak at the joint.

XQ238. Always leak? A. Leak at the joint.

XQ239. That is the only trouble you ever have with them? A. Some of the pens, sometimes they flow too freely towards the end.

XQ240. You never have any broken pens come back? A. We don't repair broken pens. I don't count those because we send them out.

XQ241. What proportion of the pens that you sell in your store are Lincoln pens? A. There is a small proportion.

XQ242. You don't carry a full line of A. A. Waterman & Co. goods do you? A. Yes, we carry one each so that if they want them we have got them.

XQ243. Don't you know they make other styles and sizes of pens that have a joint under the finger? A. They carry larger ones.

XQ244. Don't you have those? A. No.

XQ245. Then you don't have a full line? A. No, not that 4346
particular style. We don't want it. We run mostly on the self-filling.

XQ246. How many pens a week do you sell of all kinds and all sizes? A. I could not tell you exactly. Sometimes it is more and sometimes less.

XQ247. Give us an average? A. I should say a good average would be thirty a week. That would be ordinary business.

XQ248. Do you know anybody else in Boston that sells these pens at retail? A. Yes.

XQ49. Who? A. Smith & McCance.

XQ250. Where is that? A. 38 Bromfield Street.

XQ251. Do they carry as many pens in stock as you do? A. No, not quite as many. 4347

XQ252. Do they carry a large stock? A. Yes.

XQ253. Who else sells A. A. Waterman & Co. goods in Boston that you know? A. D. C. Percival.

XQ254. Do they retail them? A. No, they wholesale them.

XQ255. They do not sell at retail? A. No.

XQ256. Who sells at retail? A. W. B. Clark & Co.

XQ257. How long since they carried them? A. They send to me occasionally for pens.

XQ258. W. B. Clark & Co.? A. Yes.

XQ259. Is their place on Tremont? A. 26 Tremont.

XQ260. How often do they send down to your store for pens? A. Not very often.

4348 *Josephine Dooley*

XQ261. Once a week? A. No.

XQ262. Once a month? A. Yes.

XQ263. How many pens do they get when they send down—more than one? A. The last time they got three.

XQ264. Did they return them all? A. No, sold them all.

XQ265. Did not return any? A. No.

XQ266. Do you know whether they carry any stock of A. A. Waterman & Co. pens? A. No, not a big stock.

XQ267. They don't carry any stock at all? A. They may have half a dozen there.

XQ268. Anybody else that you can name? A. M. I. Ayer, Old South Building.

4349 XQ269. Does she carry a big stock of A. A. Waterman & Co. pens? A. Yes.

XQ270. About the same as yourself? A. About the same, yes.

XQ271. Who else sells A. A. Waterman & Co. goods there? A. The Diamond Company. I don't know what they call it—on Washington Street.

XQ272. Anybody else? A. F. H. Thomas & Co., Boylston Street. They carry a big line of our goods.

XQ273. How are these A. A. Waterman & Co. goods usually offered for sale; do you sell them as Waterman pens? A. No.

XQ274. You never sell them as Waterman? A. No.

XQ275. What do you mean by Waterman pens—A. A. Waterman & Co.? A. L. E. Waterman pens would be Waterman pens.

4350 XQ276. They are usually termed in the trade Waterman pens? A. Yes.

XQ277. And when people ask for Waterman pens they mean Waterman Ideal fountain pens don't they? A. Yes, I think they would.

XQ278. Do you think you repair daily twice as many A. A. Waterman & Co. pens as you sell? A. No.

XQ279. Well, your figures indicate it? A. I have only struck an average on the sales.

XQ280. You say you sell about thirty pens a week? A. Yes.

XQ281. And you repair about eight a day? A. That might be I am only just guessing at it. I have not got exact figures.

XQ282. Have you not in your store been telling customers that the L. E. Waterman Company did not make a self-filling fountain pen? A. No.

XQ283. Never told anybody that? A. No.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ284. If a person comes into your shop and says, "I want an Ideal pen" what do you do? A. I send him over to 8 School Street.

RDQ285. Do you try to sell him anything else? A. No. If they want an Ideal they will usually insist upon an Ideal and 4352
I will send them over there.

RDQ286. If a man is carrying an A. A. Waterman & Co. pen he would be as apt to call it a Waterman pen as anything else? A. Yes, sometimes they mean our pen.

RDQ287. When they come into your shop do they ask for a Waterman? A. Yes, and it happens to be our pens that they are talking about.

RDQ288. It depends entirely on what pens they have been accustomed to? A. Yes; half the people don't see the initials "A. A." and "L. E."

RDQ289. Is it not a fact that there are fifteen or twenty different concerns in Boston that sell A. A. Waterman & Company pens? A. Yes, there must be that many. I am not familiar
with the wholesale. 4353

RDQ290. If an L. E. Waterman pen comes broken you send it right over to 8 School Street? A. Yes.

RDQ291. How often do you find a sack that has been broken in the A. A. Waterman & Co. self-filler. Is it rarely or not? A. Rarely.

RDQ292. How many would you find in a day or a week or a month? A. Two a week would be a big average.

RDQ293. How long do these sacks usually last? A. They are guaranteed to last two years, but I have one that is six years old now.

RDQ294. How often do you find the knob on the end is broken? A. About once or twice a week.

RDQ295. Those knobs are now much stronger and better than they used to be? A. Yes.

RDQ296. Much larger? A. Yes.

RDQ297. Mr. Chaplin who was formerly with the Colonial Pen Company and concerning whom you have testified is now the manager of the New England Branch of the L. E. Waterman Company? A. Yes.

RDQ298. In Boston? A. Yes.

RDQ299. He does the buying for the store? A. I think so.

RDQ300. All of it? A. Yes.

RDQ301. You buy of the A. A. Waterman Company? A. Yes.

4355 RDQ302. And you buy outright and sell? A. Yes.

RDQ303. That is the only sense in which you represent them?

Mr. Watson: I object to this as leading and directly opposite from the witness' prior testimony, and the court's attention is called to the fact.

A. Yes.

RDQ304. Is there any writing in existence, or has there ever been, between Ailman & Son and A. A. Waterman & Co. in relation to the sale of pens?

Mr. Watson: Objected to as incompetent and not within the knowledge of this witness.

4356 A. Yes, there was a letter.

RDQ305. Letters? A. Yes.

RDQ306. What was the effect of those letters? A. That we should take the retail branch of the business and represent A. A. Waterman and opening the letters, anything marked Boston.

RDQ307. Was not that done many years ago? A. Yes.

RDQ308. Probably over six years ago? A. Yes, five or six.

RDQ309. Before the Modern Pen Company was started? A. Yes, before.

RDQ310. Have you ever assembled the parts of a pen? A. Yes.

RDQ311. You got instructions in regard to that from the factory? A. Yes.

4357

RDQ312. Is that a very difficult thing to do? A. No.

RDQ313. It is about the easiest thing in the manufacture of pens, is it not? A. Yes.

RDQ314. How long does it take anybody to assemble the different parts and adjust them? A. Two or three minutes.

RDQ315. This Lincoln pen with the joint under the finger is the cheapest grade that you sell? A. Yes.

RDQ316. As to the relative sales by Clark & Company and yourself you simply know what was told you? A. Yes, that is all.

RDQ317. Is that clerk a man or a woman? A. A woman.

RDQ318. What did she tell you about their sales?

Objected to as incompetent.

4358

Question withdrawn.

RDQ319. You spoke of the L. E. Waterman Company being large advertisers. In your opinion are their sales made on their advertisements or on their merits?

Objected to as incompetent.

A. On their advertising.

RDQ320. That is your opinion as an expert pen repairer?

Same objections.

A. Yes.

RDQ321. Did you ever see with your own eyes an Ideal self-filler? A. I have seen the Remex, that has a soft rubber sack.

4359

RDQ322. It has a bar at the side? A. That is a Conklin.

RDQ323. There is a kind of pressure bar on the side? A. Yes. I meant that little knob on the end, is that what you mean, that little silver plated thing?

RDQ324. Do the L. E. Waterman people make a self-filler that is called the Ideal? A. No.

RDQ325. Have you ever seen one? A. I never saw one.

RDQ326. Substantially all their goods, the pens that they push, have a joint under the finger?

Objected to as incompetent and immaterial.

A. Yes. They have a safety pen with it as well now.

4360

RDQ327. Is it not a fact that the plaintiff's house or business at 8 School Street treated you so impolitely that the Ailman Company wanted you to come down here and testify? A. Yes.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ328. What did they do to you that seems to have hurt your feelings? A. They don't know where we are.

RXQ329. Why should they know where you are? A. On the same principle that I know where they are. We use them politely.

RXQ330. You represent A. A. Waterman & Co.? A. We
4361 like to sell all the A. A. Waterman & Co. pens that we can.

RXQ331. Do you represent the A. A. Waterman & Co. New York? A. No, not personally.

RXQ332. In what way do they slight you in not knowing where you are? A. As I said before, they don't know where we are, if a person comes in and asks for us.

RXQ333. When they come in and ask for Ailman & Son— A. We would send them over.

RXQ334. When they ask for A. A. Waterman & Co. you think that they should send them to you? A. Yes.

RXQ335. And because they do not send them to you, that is your ground of complaint? A. Yes.

RXQ336. That is the only ground of complaint that you have
4362 isn't it? A. Yes.

RXQ337. When customers come in and ask for Waterman pens do you sell them an A. A. Waterman & Co. pen? A. I tell them that there are two Watermans.

RXQ338. When they ask for a Waterman pen do you sell them an A. A. Waterman pen? A. No, I tell them that there are two Waterman pens.

RXQ339. If they come in and ask for a Waterman pen you always explain the difference to them? A. I always explain the difference to them.

RXQ340. It would be wrong to sell them a Waterman pen without explaining the difference, under those cirdcumstances would it not?

4363

Objected to; this is not a school of morals.

A. No, I don't think so.

RXQ341. You think it would be all right to sell them an A. A. Waterman & Co. pen when they ask for a Waterman? A. Yes.

RXQ342. That would be all right? A. Yes.

RXQ343. You do that right along? A. No, never. I always explain the difference.

RXQ344. Why? A. Because I feel as if I am waiting on the customer and I feel obliged to explain that there are two. I don't look at the wrong or the right side of it.

RXQ345. When they come in and ask for a Waterman pen you sell them an A. A. Waterman & Company pen? A. I sell them our pens, yes. I don't always sell them. 4364

RXQ346. You try to sell them? A. Yes, I try to sell them a fountain pen.

RXQ347. When they ask for an L. E. Waterman self-filling pen what do you sell? A. They usually mean my pen.

RXQ348. You sell them an A. A. Waterman & Co. pen? A. I tell them that it is an A. A. Waterman & Co. fountain pen.

RXQ349. And always explain the difference? A. Yes.

RXQ350. When did you open any mail addressed to A. A. Waterman & Co., Boston? A. It is some time now?

RXQ351. A month? A. It is longer than that; it is a couple of months any way. As a rule I send it on to New York.

RXQ352. Without opening? A. Yes, but I can open it. 4365

RXQ353. You have a right to open it? A. Yes.

RXQ354. And they knew in New York that you have been doing it all the time? A. Yes.

RXQ355. Did you write them about it? A. No, they wrote me.

RXQ356. And told you to? A. Yes.

RXQ357. When did this correspondence take place? A. Five or six years ago.

RXQ358. There never has been any correspondence since about it? A. No.

4366 *M. Isabel Ayer*

RXQ359. Did the Modern Pen Company know that you sent the letters that you opened? A. Sometimes they never saw them. I would open them and send them off again.

RXQ360. Sometimes you would send them off? A. Yes.

By Mr. Bacon:

RDQ361. Are you the largest and best known seller of A. A. Waterman pens in Boston? A. Yes.

Signature waived.

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UNITED STATES CIRCUIT COURT,

4367 SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN, Plaintiff,

vs.

MODERN PEN COMPANY, Defendant.

Met pursuant to adjournment at the office of Alexander S. Bacon, 37 Liberty Street, New York, April 18, 1911, at 10:30

4368 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Complainant.
Alexander S. Bacon, for Defendant.

M. ISABEL AYER, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

*Direct-examination by Mr. Bacon:*

Q1. Please state your name, residence and business? A. M. Isabel Ayer, 130 Bowdoin Street, Boston; business address, 7 Old South Building, Boston; business, merchant.

4369

Q2. Do you have a fountain pen store? A. I do; it is called "The Fountain Pen Store."

Q3. That is the name of it? A. Yes.

Q4. Have you been devoting yourself exclusively to fountain pens? A. Since 1903. I have a small side line in addition, for the last three years.

Q5. And what is that? A. Picture puzzles.

Q6. How long have you been in the fountain pen business? A. Since August, 1903.

Q7. What were you doing before that? A. For one year I canvassed fountain pens. Previous to that I was a teacher.

Q8. Do you also make a business of repairing pens? A. Yes, that has been so from the start.

4370

Q9. Do you advertise yourself as a pen expert? A. I do, it is on my card.

Q10. What makes of pens do you handle? A. Ten of the leading makes. Do you want to know their names?

Q11. Yes? A. A. A. Waterman Modern Pen, L. E. Waterman Ideal, the Conkling, the Moore, the Boston, the Sterling; I did have the Crocker.

Q12. Did you name the Lincoln? A. I am putting that in last, being less expensive, and the Swan.

Q13. On an average about how many pens will you sell a day; could you tell that? A. I could not tell that because it varies so much. Sometimes I sell five or six pens, sometimes only one or two.

4371

Q14. And then in the season a great many more I suppose? A. Yes, during December and January a great many more.

Q15. How many do you repair on an average; can you tell that? A. The repairs vary so much.

Mr. Watson: I object to all this line of testimony as entirely immaterial to the issues in the case.

A. (Repeated.) From six to fifteen, paid repairs. Of course there are a great many where there are very slight repairs, where pens are bought.

Q16. And when you sell a pen I suppose you keep it in repair for nothing? A. No, indeed, not necessarily I mean.

Q17. If there is anything the matter with the pen from its own defect you would repair it for nothing? A. Any defect is made good.

Q18. But if a repair comes from an accident you do not repair it for nothing? A. No.

Q19. About what proportion of your repairs would be L. E. Waterman goods?

Mr. Watson: This is objected to as entirely immaterial to any issue in this case and I move to strike out the
4373 testimony as having no bearing on the issue.

A. One-third.

Q20. And about what proportion of A. A. Waterman? A. One-third.

Q21. And the remaining third would be of other makes? A. Other makes.

Q22. In your opinion as an expert, in selling and repairing pens, what is the best pen of those that you sell?

Mr. Watson: That is objected to as the witness cannot possibly be competent to answer that question.

A. A. A. Waterman.

Q23. Give your reasons for that, please? A. Because it is less
4374 liable to sweat and leak; it is more easily and neatly filled and it will not drop when it is nearly empty. By construction it cannot have a leaky joint.

Q24. As it has no joint to leak? A. Yes.

Q25. That is the self-filling pen? A. Yes; and in all other respects it is equally good or superior to any other make.

Q26. What fault is usually found with the L. E. Waterman pens that are brought to you for repairs? A. The most frequent defect is a leaky joint.

Q27. Is that common to all pens having joints? A. Yes.

Q28. Why? A. The screw-joint, especially under the finger, may become leaky, because of the nature of the screw, being hard rubber.

4375

Q29. It has to be unscrewed to be filled? A. Yes.

Q30. And every time they are unscrewed and screwed up again the screw is liable to wear? A. To wear and strain.

Q31. What have you to say about the feed of the pens? A. They vary a great deal. I prefer the A. A. Waterman or the reed feed to any other feed. I find it more satisfactory.

Q32. Is the reed feed used in the A. A. Waterman pen? A. It is.

Q33. Is it used in any other pen? A. Yes.

Q34. Which? A. The Sterling.

Q35. What have you to say as to the gold pens in the A. A. Waterman fountain pens? A. They are equal to any other pens of any other make; their fit I think is superior.

4376

Q36. As far as you know they are made in the highest style of the art as known today?

Mr. Watson: Objected to as immaterial and incompetent and also as this witness does not qualify as an expert.

A. Yes.

Q37. Are you familiar with the assembling of the parts of fountain pens? A. Yes.

Q38. Is that a very difficult proceeding? A. That is a matter of degree I should think. I don't know how difficult it would be for other people.

Q39. Is it easy for you? A. I can do it without difficulty.

4377

Q40. You can assemble the whole pen in about a minute and a half? A. If it is apart, certainly.

Q41. If you were selling from your stock to a neighbor, a merchant in Boston, whom you expected to have as a permanent customer what pen would you recommend him to take?

Mr. Watson: Objected to as entirely immaterial and incompetent.

A. The A. A. Waterman Modern Self-filler.

4378

*CROSS-EXAMINATION by Mr. Watson:*

XQ42. Have you ever manufactured fountain pens? A. May I ask what you mean by manufacturing?

XQ43. I am asking the question and I would like to have you answer it. Have you ever been engaged in the manufacture of fountain pens? A. I never have been in a factory as an employee.

XQ44. Have you ever manufactured the rubber parts of a fountain pen? A. May I ask a question—because I have never been engaged in a factory but I have made a part to supply in repairing?

4379 XQ45. Have you ever been employed or engaged in any way in a fountain pen factory where rubber parts of fountain pens were made? A. Not directly.

XQ46. Or indirectly; if so, what factory? A. No, I have not.

XQ47. Have you ever been employed or engaged in any factory where gold pens are manufactured? A. I have not.

XQ48. You know nothing about the method of manufacturing gold pens? A. I do.

XQ49. How are they made? Tell us how they are made? A. I don't know the alloy. I have watched their construction.

XQ50. That is your only acquaintance with them? A. That is my acquaintance with the manufacture of gold pens.

XQ51. You say it would be an easy matter to fit the parts
4380 of a fountain pen together if it had been taken apart. Would you say that was true if these parts had not been put together before, if they were new parts of a new pen to be assembled? A. If they fitted it would be perfectly simple.

XQ52. But supposing they did not fit? A. I think I could learn to fit them very quickly.

XQ53. Don't you know as a matter of fact that the parts of a fountain pen when they come from the factory have to be fitted to each other? A. Yes.

XQ54. And that that is a work which requires an expert person who is very familiar with that line of work? A. They would have to know how to do it.

4381

XQ55. How long have you sold Waterman's Ideal Fountain Pens? A. Since August, 1903.

XQ56. You usually refer to these as Waterman pens don't you? A. I speak of them always as the Waterman Ideal or the L. E. Waterman pen.

XQ57. If a man comes in and asks for a Waterman pen you understand what he means? A. Not necessarily.

XQ58. How long have you known the Waterman Ideal Fountain Pen? A. I don't know.

XQ59. How long since you first heard of them? A. I don't know; when I heard about fountain pens I presume; when I began to distinguish between the names of fountain pens.

XQ60. And when was that? A. I don't know. 4382

XQ61. Was it before you began to deal in them as a merchant? A. Yes, indeed.

XQ62. How long before? A. I don't know.

XQ63. What fountain pens did you first hear of in the market? A. I don't know.

XQ64. What fountain pens did you first become familiar with? A. The Crocker.

XQ65. And when was that? A. 1899, possibly. No, it could not have been.

XQ66. What is the first fountain pen you ever owned? A. Crocker.

XQ67. When you first began to engage in the sale of fountain pens what pens did you carry at that time? A. The Crocker. 4383

XQ68. Is that the only one? A. Yes, at that time.

XQ69. When did you put in the Waterman Ideal Fountain Pen? A. When I had a store.

XQ70. When was that? A. In August, 1903.

XQ71. How long prior to that had you been handling the Crocker pens? A. One summer previous to my year's canvass.

XQ72. When you opened your store in 1903, did you put in the Crocker pen and the Waterman Ideal Fountain Pen? A. With other makes, yes.

XQ73. What other makes did you put in at that time? A. The Sterling, the Moore, the Parker, the Waterman Ideal, the

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XQ73. What other makes did you put in at that time? A. The Sterling, the Moore, the Parker, the Waterman Ideal, the

Swan; practically the same makes that I carry today; all I think except the Boston.

XQ74. When people come into your store and ask for a Waterman pen do you sell them an A. A. Waterman pen? A. I ask them which they want, an L. E. or an A. A.

XQ75. You don't know what they mean when they say Waterman pen? A. No.

XQ76. You never knew that the general public knew the Waterman Ide Fountain Pen as a Waterman pen? A. Not necessarily.

XQ77. You never knew that? A. Not necessarily.

XQ78. Never heard anybody refer to them as Waterman pen?
4385 A. Certainly but they might be talking about the other pen.

XQ79. When your customers ask for a Waterman pen what do you say to them? A. "Which Waterman pen do you mean, the A. A. or the L. E. Waterman."

XQ80. What do they say then? "I want a Waterman;" "I want a self-filler."

XQ81. Do they say they want a self-filler? A. Very often.

XQ82. You are sure about that? A. Certainly.

XQ83. When they ask you for a Waterman pen you say, "Which one." Let us get this thing very straight now? A. Yes.

XQ84. You say, "Which one"? A. Yes.

XQ85. "A. A." or "L. E."? A. Yes.

XQ86. And then they say to you they want a Waterman? A.
4386 Yes.

XQ87. And then what do you say? A. No, I think if we went back to my previous conversation, that they said they wanted a self-filler.

XQ88. They always say they want a self-filler? A. No, they don't always say it.

XQ89. What do they say? A. They are likely to say that they want a self-filler. I then say, "Well, then, you want an A. A. Waterman."

XQ90. Why do you say that? A. Because it is superior.

XQ91. Does not the L. E. Waterman Company make a self-filler? A. That is what my customers frequently ask and I say yes.

4387

XQ92. And you take it for granted when they say they want a Waterman pen and they say they want a self-filler, that you show them A. A. Wateman Company goods? A. Yes, I do.

XQ93. And you call that a Waterman pen? A. I do not.

XQ94. You don't know that the Waterman Ideal Fountain Pen is usually spoken of by the public as Waterman pens? A. I don't know why it should be. My customers do not.

XQ95. You don't know that? A. No, sir.

XQ96. When the customers ask you for a Waterman pen and you say, "Which do you want, an A. A. or an L. E." What do they say then? A. They are likely to say "A self-filler."

XQ97. What do they say, not what they are likely to say; what do they say? 4388

Mr. Bacon: Objected to as it is impossible to say what everybody says.

XQ98. What do your customers say? A. They don't all say the same thing.

XQ99. What do they say? A. You want several replies?

XQ100. Yes? A. Very well, if you don't stop me when I give you four. Now what is your question?

XQ101. What do they say when they ask for a Waterman pen and you tell them that you have A. A. or L. E.? Which would it be—an A. A. or L. E.? A. I say, "Do you want a self-filler."

XQ102. You say, "Do you want a self-filler"? A. Or if they 4389
say they want a self-filler I say, "What do you want" and they say they want a self-filler and I say, "If you want a self-filler you want an A. A. Waterman Company pen." They reply, "Why"? I say, "Because the self-filler A. A. Waterman pen is superior to any self-filler that the L. E. Waterman people have produced so far." Do you want any more conversation?

XQ103. When they ask for a Waterman pen you try to sell them an A. A. Waterman pen? A. Certainly, when they want a self-filler.

XQ104. Whether it is a self-filler or not if they ask for a Waterman pen, your efforts are to sell them an A. A. Waterman pen? A. If it is for their best good, yes.

4390

XQ105. You are the judge; if you think it is for their best good that they should have A. A. Waterman pens? A. Yes.

XQ106. Therefore, you sell it to them? A. Yes, and ninety-nine times out of a hundred it is for their best good.

XQ107. That is what you do and that is what you try to do? I want to get at the fact, not what your intentions are. When they ask for a Waterman pen you try your best to sell them an A. A. Waterman pen? A. If it is for their best good.

Mr. Watson: I move to strike out the answer as irresponsive and call the attention of the Court to the fact that the witness declines to answer.

4391

Mr. Bacon: The witness' answer is just right.

Mr. Watson: The Court's attention is called to the comment of defendant's counsel in the presence of the witness.

XQ108. (Repeated)? A. Yes.

XQ109. When the customer asks for a Waterman pen and you ask them which, A. A. or L. E. Waterman, don't they express surprise that there are two Watermans? A. Sometimes.

XQ110. They only know one Waterman usually, is not that a fact? A. No.

XQ111. You don't have any cases where they only know one Waterman? A. Yes.

XQ112. What do those people say to you? A. "Are there

4392

two Waterman pens?"

XQ113. They thought there was only one Waterman pen? A. Probably.

XQ114. Don't they say so to you? A. Sometimes.

XQ115. What do you think they mean when they say there is only one Waterman? A. I don't know.

XQ116. You have no idea which Waterman they mean, have you? A. I think they may mean L. E. Waterman. I say, "You may have in mind the L. E. Waterman pen. There are two concerns, A. A. and L. E. Waterman."

XQ117. Do you sell more A. A. Waterman pens than you do L. E. Waterman? A. Certainly.

4393

XQ118. That is because you sell them in answer to the request of the customers for Waterman pens, is it not? A. On their judgment.

XQ119. Is not the reason why you sell A. A. Waterman pens when they ask for Waterman pens, because you make more profit on those pens than you do on the others? A. Not necessarily.

XQ120. Is not that the reason that you recommend them so much to customers? A. Not necessarily.

XQ121. It is the fact that you do make more profit is it not? A. Not always.

XQ122. Don't you pay less for the A. A. Waterman goods than you do for the Waterman Ideal Fountain Pens? A. Not always.

4394

XQ123. What A. A. Waterman goods do you pay more for than you do for L. E. Waterman goods? A. That would go in our discounts.

XQ124. I want to know the whole story? A. The L. E. Waterman people take one of their pens for half. I will illustrate. An L. E. Waterman pen which retails at $2.50 can be bought by me for $1.25, less 40 per cent and a cash discount.

XQ125. What is the cash discount? A. I have forgotten; three per cent or something of that sort. Please don't use that. I have forgotten because I don't usually take advantage of that.

XQ126. You buy the $2.50 pens for $1.25, less 40 per cent? A. Yes.

4395

XQ127. In other words, you buy the $2.50 pen for $.75; is that right? A. Yes, if I have an L. E. Waterman pen to turn in in the way of exchange.

XQ128. When you buy the goods direct, what do you pay? A. Without that one to turn in, that is all.

XQ129. You don't buy them in any other way? A. I usually have some to turn in.

XQ130. You only buy from the L. E. Waterman Company what you turn in in the way of secondhand pens? A. No, I don't mean that. I usually do.

4396

XQ131. You don't buy any goods from them where you pay their regular trade terms? A. I don't wish to make that statement. I usually return the old goods in the way of exchange to A. A. Waterman.

XQ132. How many of those goods do you get and turn in; how many of those goods do you take up a day? A. I get, perhaps, one or two a week.

XQ133. Does that supply you with Waterman Ideal Fountain Pens to satisfy your trade? A. Yes, I always have plenty.

XQ134. You only sell one or two Waterman Ideals a week? A. Yes.

4397 XQ135. What do you pay for A. A. Waterman goods that sell for $2.50? A. I pay the regular price with the regular trade discounts.

XQ136. You never turn any in in that case, do you? A. Sometimes; rarely.

XQ137. You buy those goods direct at the regular trade discounts? A. I turn in what I have.

XQ138. On what basis do you turn those in? A. Forty off.

XQ139. You mean forty off the list price? A. Yes, forty per cent off the list. The L. E. Waterman offer fifty per cent.

XQ140. You get the same trade discount on the balance that you have to pay? A. The regular dealers' trade discounts.

XQ141. What are those? A. Filling to the gross fifty per cent. Do you want all the discounts?

4398 XQ142. Are there any additional discounts? A. On smaller amounts, on a half gross, and three dozen and one dozen.

XQ143. Do you fill the gross stock? A. Yes, I carry gross stock.

XQ144. You get the gross discount? A. Yes, I get the gross discount.

XQ145. That is fifty per cent? A. Fifty per cent.

XQ146. Any other? A. Yes, and the yearly discount on a thousand purchase.

XQ147. How much is that? A. That is an extra ten per cent.

XQ148. What is the regular trade discount to the L. E. Waterman Company? A. I have forgotten. I know what I get.

XQ149. You do not buy any from them on a regular trade discount? A. Yes, I do. There is, to me, on the filling to three dozen—or, I think it is less—well, my discount is forty per cent.

XQ150. Off the retail list price? A. Yes.

XQ151. But practically all the goods you buy from L. E. Waterman Company are on turning in the old pens? A. Yes.

XQ152. That is your main proposition, is it? A. No, not necessarily. I have bought goods of them. I buy them if I want anything.

XQ153. You don't find it necessary to buy very often from 4400
them, do you? A. There is less demand for them.

XQ154. Very few of their pens sold by you? A. Yes.

XQ155. You sell very few pens of the L. E. Waterman Company? A. Yes.

XQ156. What pens do you sell the most of? A. A. A. Waterman & Co. Modern Pen, I call it.

XQ157. Under the regular trade discount, what is the comparative cost of the $2.50 pen to you, between the A. A. Waterman and the L. E. Waterman? A. I will have to figure on it. That cannot be answered, for this reason. May I give it?

XQ158. Go ahead? A. The pen that is turned in to me, the old L. E. Waterman pen or the old Ideal pen costs me something; that is, I did not get my full price for the pen when it 4401
was turned in. That old pen may have been turned in in exchange for a high price or low price pen and I may have allowed one price or another for it; so when it comes to the price on the L. E. Waterman pens, they vary because of the variable price of the old L. E. Waterman pens.

Mr. Watson: I move to strike out the answer as irresponsive and the attention of the Court is called to the simple question which I am unable to get answered, and the question is repeated.

Mr. Bacon: Counsel for defendant calls the attention of the Court to the fact that the witness asked the

4402

counsel if she should answer that question as she did.

Mr. Watson: The Court's attention is called to the fact that no such remarks were made at all; that counsel knew nothing about how she was going to answer the question until she did answer it.

XQ159. What is the average cost, under the regular trade discounts, of the $2.50 pen of the L. E. Waterman Company to you? A. When I turn in an old pen, or when I do not turn in an old pen?

Mr. Watson: The Court's attention is called to the impossibility of this witness understanding the question.

4403

I will repeat it. It is a very simple question. What is the cost to you under the regular trade discounts, of the $2.50 pen of the L. E. Waterman make?

A. The L. E. and the A. A. do you mean?

Mr. Watson: The Court's attention is again called to the answer of the witness and the question is repeated in this form:

XQ160. What is the cost to you when you buy of the L. E. Waterman Company, at the regular trade discount. its $2.50 pen? A. My $2.50 pen costs me $1.50.

XQ161. It was a very simple answer, wasn't it? A. No, because I always turn in an old pen, I most always turn in an old

4404

pen, so that they do not usually cost me that.

Mr. Watson: I move to strike out the answer as entirely irrelevant and irresponsive.

XQ162. Do the A. A. Waterman Company make a pen that corresponds in size and price to the $2.50 pen of the L. E. Waterman Company? A. The A. A. Waterman people make a $2.50 pen, yes.

XQ163. What does that cost you under the regular trade discounts of the A. A. Waterman & Co.? A. That would depend upon whether I turned in an old pen or not.

4405

XQ164. Under the regular trade discounts without turning in an old pen what does it cost you? A. $1.13.

XQ165. You make 37 cents more on that pen than you do on L. E. Waterman pen, don't you? A. It depends upon whether an old pen is turned in for the L. E. Waterman pen or not.

XQ166. When you buy those pens at the regular trade discount, from both places, as you say you sometimes do, you make thirty-seven cents more on the A. A. Waterman pen than you do on the L. E. Waterman, don't you? A. Yes.

XQ167. Is not that the reason you recommend it to your customers when they ask for a Waterman pen? A. No, sir. May I make a statement?

4406

XQ168. If you will confine yourself to answering the question I will be very much obliged. Do the A. A. Waterman & Co. manufacture pens with the joint under the finger that you have complained so much about? A. I think they have an end joint, as we call it, pen.

XQ169. And makes those in several sizes and styles? A. I think they have several.

XQ170. Do you carry those pens? A. I do not.

XQ171. You don't know whether they make several sizes and styles or not, then? A. I don't know about the styles.

XQ172. Do you carry the Lincoln pen? A. I do.

XQ173. Who makes that pen? A. A. A. Waterman & Co.

XQ174. Is not that an end joint pen? A. Yes.

4407

XQ175. Then you do carry A. A. Waterman & Co. pens that have the end joint? A. I do.

XQ176. What did you mean by just saying you did not? A. Because those are called the New Lincoln pens.

XQ177. Are they not called pens of A. A. Waterman & Co.'s make too? A. Yes.

XQ178. They have got their name on them, have they not? A. I think they have; I am not sure.

XQ179. You distinguish between the Lincoln pen and the other pens of the A. A. Waterman & Co.? A. I distinguish between the Modern pen and the New Lincoln pen, just as the L. E. Waterman distinguish between their Pen and Ink pen and their Ideal pen.

4408

XQ180. Do you yourself repair the pens you take in for repair? A. I do nearly all of my repairing.

XQ181. What do you do with those you do not repair yourself? A. Send them to the manufacturers of the pen.

XQ182. What is the nature of the repairs that you yourself do? A. Straightening the point, re-adjusting, supplying feeds and caps and new sacks.

XQ183. What occasion do you have to supply new feeds? A. They are broken sometimes.

XQ184. Did you ever supply a new L. E. Waterman feed? A. Yes.

4409

XQ185. Where did you get it? A. From some old parts that I had.

XQ186. Some old pen of theirs or some other pen? A. Some old pens of theirs.

XQ187. What is the nature of the repairs that you make to the L. E. Waterman pens? A. Straightening the points, where the pen has fallen; cleaning and adjusting. If it has a leaky joint we send it to their factory.

XQ188. How many pens do you send with leaky joints to their factory? A. I think about one-third of the repairs that come in are for leaky joints.

XQ189. How many will that average a day? A. I think on an average I will run across two leaky joints of the L. E. Waterman a day.

4410

XQ190. And all those you send to the factory? A. I recommend them to take them to their place on School Street.

XQ191. Those that you take in your store for repair, of the L. E. Waterman goods, that have leaky joints, you send all of those to the Waterman store? A. I almost always can get the customer to take them up there himself, because there is no profit in it for me. Of course, if the pen is bought from me I make good and take the pen to them.

XQ192. How many pens with leaky joints do you send to the Waterman Company a week? A. I don't know.

XQ193. Do you send one a week? A. At least.

XQ194. Do you send two a week on an average? A. I think you might put that at probably three. Wait a minute! More than that.

XQ195. Where do you send those? A. Wait a minute. Will you let me think a moment on that. I don't know how many I send and I don't want to give an answer on that question.

XQ196. Do you send as many as one a week? A. I do.

XQ197. Do you send as many as two a week? A. I don't wish to give an answer on the number.

XQ198. Where do you send them? A. For leaky joints always to the L. E. Waterman Company.

XQ199. Where? A. School Street.

4412

XQ200. Eight School Street? A. Yes. That is where the L. E. Waterman repairs are taken by me.

XQ201. And you are not willing to say you send as many as two leaky joints a week? A. I am not willing to state the number of pens that I send there

XQ202. You are not willing to say as a matter of fact that you send one a week up there with leaky joints, are you? A. Yes.

XQ203. Are you willing to say that you send two a week up there with leaky joints? A. I am not willing to give an answer.

XQ204. How long have you been selling the Lincoln pens? A. Ever since I had a store.

XQ205. Do you have any leaky joints with them? A. Yes.

4413

XQ206. You do not have much call for Watermans Ideal Fountain Pens, do you? A. Some, yes.

XQ207. How far is your place of business from 8 School Street, the Boston office of the L. E. Waterman Company? A. Less than half a block.

XQ208. People that are familiar with the goods go to their store rather than to other stores, don't they? A. Not always.

XQ209. Don't they carry a bigger assortment than you carry, at their store? A. Yes.

XQ210. They don't sell anything else but their own fountain pens at their store, do they? A. No.

XQ211. They have a larger store than you have, don't they? A. They have a larger line of L. E. Waterman pens.

4414

XQ212. What sign do you carry in your window in front of your store? A. It is a corridor store and hanging on the outside is a pen bearing the name "The Fountain Pen Store, M. I. Ayer." There is a glass sign with my name, the same, hanging out from the store. Inside the store there is a notice of repairing done. Inside the cases that I carry ink in are the individual signs of the individual makes of pens; the Conklin, A. A. Waterman, I did have the Sterling, I have the Boston. I don't know exactly what different signs are there at present.

XQ213. How do you advertise Waterman's Ideal Fountain Pens; what is the sign in reference to those? A. Just what the sign is now I don't know. I think I have their card sign.

4415 XQ214. One that you got from the company? A. Yes.

XQ215. What kind of ink do you carry? A. I carry Carters' Writing Fluid.

XQ216. Is that the only kind? A. It is all Carters. I did have some L. E. Waterman's ink at one time. I think I have none in stock now.

XQ217. Do the Waterman Ideal Fountain Pens that you sell generally prove satisfactory to your customers? A. Those that I sell are as satisfactory as those that are sold by the concern on School Street.

XQ218. How do you know that? A. Because they tell me that they would rather buy of me than at School Street—the customers; else they would go up there.

4416 XQ219. Do your customers tell you that the Waterman Ideal fountain pens that you sell them have proved satisfactory, or otherwise? A. They are not exclusively satisfactory, not always.

XQ220. Are they generally satisfactory? A. Not necessarily. They often come back and change them for other makes.

XQ221. What is the nature of the repairs that you make to the A. A. Waterman pens? A. Bent points and broken parts and lost caps.

XQ222. What parts are broken? A. The feed and the button that screws on; but not often from my customers. Those come from some of the other dealers.

4417

XQ223. You know nothing about what the other dealers' repairs are; the only thing that you know about is the repairs that are brought into your store? A. I do some repairing for other concerns.

XQ224. Do you have any rotten sacks or broken sacks? A. Very few.

XQ225. The principal trouble is with the feed? A. The principal trouble is with the pen point, where they drop them on the floor or thrust them into something. That is the usual repairs we meet any way, on all makes of pens.

XQ226. You do not count in these repairs to leaky pens the Lincoln pens, when you say one-third of the repairs you make are A. A. Waterman & Co., goods, do you? A. I don't sell a great many Lincoln pens.

4418

XQ227. But you repair all kinds of makes, whether you sell them or not, don't you? A. Yes.

XQ228. Don't you have a good many of the Lincoln pens come in for repair? A. Not many.

XQ229. Do you have more A. A. Waterman makes than of the Lincoln? A. I sell more of the A. A. Waterman, therefore I have more repairs on the A. A. Waterman than I do on the Lincoln.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

4419

RDQ230. Do you find very many self-filling pens turned in with a button broken? A. No, very few.

RDQ231. In the last few years the button has been very much strengthened, has it not, and enlarged?

Mr. Watson: Objected to as highly leading and the Court's attention is called to the leading character of the question asked.

A. Yes.

RDQ232. Do you find that the middle joint A. A. Waterman pen is weak? A. Not now.

RDQ233. Does it very often leak? A. No.

4420

RDQ234. Did you ever see an L. E. Waterman self-filler with your own eyes? A. Yes.

RDQ235. How many? A. I don't know; not a great many.

RDQ236. They are very rare, are they not? A. They were not at one time. They are not sold very much now.

RDQ237. Their specialty is the end joint pen? A. Yes.

RDQ238. The same kind of a pen that was manufactured twenty years ago? A. Yes.

RDQ239. You said that you sold an A. A. Waterman self-filler in ninety-nine cases out of a hundred, and you also said that you sold them to a customer when it was for their good. What did you mean by that?

4421

Mr. Watson: Objected to as not the testimony of the witness and as immaterial and irrelevant.

A. When he will be best satisfied with the pen; when I can make him the most permanent customer.

RDQ240. How can you tell that he will be most satisfied? A. From the description of his needs.

RDQ241. If a man is going to stay right in Boston, do you make any distinction between him and a man who is going to travel abroad?

Objected to as immaterial.

A. Yes.

4422

RDQ242. Why so? A. Because the L. E. Waterman people have more offices abroad than almost any other make of pens and they might handle any other makes, especially that of A. A. Waterman pens. I have known instances where the gold pens have been filed off and where the button has been broken by the L. E. Waterman people.

RDQ243. At $2.50 Modern and $2.50 Ideal, which is the better pen?

Mr. Watson: Objected to as this witness is incompetent to answer.

A. The A. A. Waterman Modern.

4423

RDQ244. You get a larger discount from the A. A. Waterman people than from L. E. Waterman people by reason of the fact that you get an additional discount for large sales; is that a fact? A. Yes, the larger quantity carried and sold. That is true of all fountain pen concerns. The L. E. Waterman people would give me probably a large discount—I don't know what their greatest quantity discount is—did I carry and sell as many of theirs. I am very glad to make this statement.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ245. Who was it connected with the L. E. Waterman Company that broke the button and filed the pen off? A. I don't know. 4424

RXQ246. How do you know then that they did it? A. Because a dealer in a neighboring town took in an A. A. Waterman Modern self-filling No. 20 or No. 30 and it was afterwards brought to me as having been unsatisfactory, and I said, "Who did you leave it with?" and he told me; and that pen was sent over to New York by a pen dealer who carries only the L. E. Waterman pens. It must have been known to the L. E. Waterman people.

Mr. Watson: I move to strike out all the testimony of this witness regarding the breaking of the button and the filing of the pen.

4452

The Witness: That is only on the filing of the pen. I can testify to the bent point. I saw that done.

RXQ247. Who did it and where? A. It was done by a salesman in the L. E. Waterman store. It was pressed down into an ink bottle.

RXQ248. What store? A. Eight School street.

RXQ249. When was it? A. I don't recall.

RXQ250. Who was the salesman? A. I don't recall. They have a number.

RXQ251. Was it done a month ago or a year ago? A. I don't even recall that; whether it was more or less than a year. It may be about that time.

4426

RXQ252. Is it not a fact that the discount that you have given on Waterman Ideal fountain pens, of forty per cent off, is the regular trade discount? A. For that number of pens carried.

RXQ253. How many? A. Three dozen.

RXQ254. Don't you know it is the same thing? A. I don't know because I have not been personally interested in it.

RXQ255. Don't you know it is the same thing? A. I do not know it.

RXQ256. You don't know that it is different, do you? A. I should assume that it was different.

RXQ257. You don't know anything about it; you have no personal knowledge of it at all have you; what the discount is?

4427 A. I have no recollection. I did know at one time.

RXQ258. The trade discount is forty off, is it not? A. The trade discount on three dozen pens, as near as I can recall, is forty per cent.

RXQ259. And that is the only discount that you know of? A. I know that the others are different.

RXQ260. What others are different? A. On six dozen.

RXQ261. How much is this? A. Wait a minute. I don't know. I don't know whether it is four and eight and twelve, or whether is it three and six and twelve, as it is with the A. A. Waterman. It is a long time since I bought any. I had no desire to have any more than the three dozen.

RXQ262. What is the discount on a three dozen lot of A. A.

4428 Waterman Company? A. Forty and five.

RXQ263. How much does the $2.50 pen, on that discount, cost you? A. That would be $1.375, I think. I want to state that the L. E. Waterman gives a yearly additional discount on three dozen.

RXQ264. Does not the A. A. Waterman give the same yearly discount? A. No, they do not. The L. E. Waterman people give an additional yearly discount, I think. I don't take advantage of it.

RXQ265. You don't know what it is or whether they give it or not? A. I know they do give an additional yearly discount where the stock is filled each month to three dozen.

4429

RXQ266. What is that discount? A. I don't know. I don't take advantage of it, so I have forgotten.

RXQ267. Is it not a fact that you only carry a very few Waterman Ideal Fountain Pens in stock? A. I carry three dozen.

RXQ268. All the time? A. Yes. The stock may run below that.

RXQ269. If they are such a poor pen, why do you carry them at all? A. Because I prefer to sell an L. E. Waterman pen to a customer who is going to make a gift to a friend, where the pen will go into a far country and away from the repairer, because should I send an A. A. Waterman pen to a distant place, in case a change was needed to be made, the pen would be ruined by the L. E. Waterman dealer—likely to be ruined; you would stand a chance.

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RXQ270. That is your experience with them? A. Yes, that is what I tell my customers.

RXQ271. And how many cases of ruin have you ever known in your experience? A. I didn't lay them up as anything but a lesson.

RXQ272. Do you know the name of any person who was the owner of one of these pens that were ruined in the manner you have described? A. I think I could find the name of one.

RXQ273. Do you know any name? A. I do not recollect.

RXQ274. Will you furnish us at any time the name of any customer of yours, giving the address, whose pen was ruined in the manner you have described? A. I think I could.

4431

RXQ275. We would be very glad to have you do that—where it was ruined. Is it not the fact that you carried the Waterman Ideal fountain pens simply for the purpose of being able to say that you carried the Waterman Ideal pens and when people come in and ask for a Waterman pen you sell or try to sell them an A. A. Waterman pen; is not that the only reason why you carry those pens? A. No.

RXQ276. Don't you use the Waterman Ideal pen as a means of getting people into your store, asking for Waterman pens and then selling them an A. A. Waterman pen? A. No.

4432

By Mr. Bacon:

RDQ277. Do you have one of these signs in your store (showing witness a sign)? A. No, I have not. I depend very little upon signs any way.

Signature waived.

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MAX L. BLATZ, a witness called on behalf of the defendant, being duly sworn, testified as follows:

4433 *Direct-examination by Mr. Bacon:*

Q1. State your name, residence and business? A. Max L. Blatz; 15 North Street, Mount Vernon, N. Y.; salesman, for A. A. Waterman & Co.

Q2. How long have you been employed by the A. A. Waterman Company or the Modern Pen Company? A. Going on about five years. I would not say the exact number of months.

Q3. What is your territory? A. My territory has been the State of New York, the New England States.

Q4. Did you receive any instructions from the officers of the Modern Pen Company, any one of them, in relation to how you should sell A. A. Waterman & Co. pens; if so, state what they were? A. I was told to sell the A. A. Waterman pens as being
4434 A. A. Waterman pens, and emphasize the word "A. A."

Q5. Have you ever in any instance sold to any dealer A. A. Waterman & Co. pens without explaining to them that they were the goods of A. A. Waterman & Co.? A. No, always sold them under A. A. Waterman & Co.

Q6. Have you ever sold any just as Waterman Company alone? A. No.

Q7. Have you had any experience recently in Buffalo with your customers who had been told that there was no such firm as A. A. Waterman & Co., and that they had no right to sell their goods? If so, state when it was and give the conversation of the dealer.

4435

Mr. Watson: Objected to as immaterial, irrelevant and incompetent.

A. The exact date I could not state. I should judge it was in the neighborhood of six or eight weeks. I won't say the exact date.

Q8. Six or eight weeks ago? A. Yes. Calling upon my trade there I was informed by Mr. Cohen, whose address is—I don't know the number of his place, I think it is 350 or 330 Main Street—I presented my card and he was surprised to see me in there representing A. A. Waterman & Co., and stated to me that a man was in there with a woman and wanted to buy a pen and he asked if there was any particular make that he wished 4436
and he said no. He was loaded up pretty well with Parkers and Onotos and Conklins; he was trying to dispose of those three makes, as I understood, so as to put in our line of A. A. Waterman & Co. He also carried an L. E. Waterman pen in there and he showed the party the Parker and he did not want that; he showed him the Conklin and he said he did not want that; he showed him the Onoto and he didn't want that and he pulled out one of our pens and showed him that pen and as far as I understood the man did not purchase the pen, but he told him, "Are you aware that you are selling a pen that you have no right to?" The man says, "No, sir, I am not. I am selling A. A. Watermain & Co. pens. Here is the name right on the barrel." I told him I would report to the firm on this case and they would send 4437
him instructions exactly as to his selling A. A. Waterman & Co. pens.

Mr. Watson: I move to strike out the answer as incompetent and hearsay.

A. (Continued.) From there I went to the Whiting Stationery Company on Main Street. The number I don't know. I walked in there and presented my card and the young lady there was surprised; she said, "A. A. Waterman & Co.? There is no such firm." I said, "Oh, yes, there is." She stated that a representative had been there with a woman, a lady, and said they

4438 could not sell any A. A. Waterman pens. She stated to me that I could go all over the city of Buffalo and I would not be able to sell any A. A. Waterman pens as this attorney had been around and stated to all the customers that there was no such company as A. A. Waterman. I had quite a conversation with regard to my goods then, stating about the good quality and all, and tried to get an order, but it was impossible. From there I went to Adam, Meldrum & Anderson and called on Mr. Simons the buyer and Mr. Simons said, "There is no such thing as an A. A. Waterman pen." Mr. Simons said there had been a man there with a woman looking for a pen to purchase, and whether the sale of this pen went through, I don't know in regard to that;
4439 but he stated to me that there was a discussion arose and that they called Mr. Gibson, I think, and they conversed together, the three of them and Mr. Simons asked the attorney whether he could sell A. A. Waterman's pens and he said no. Mr. Simons said to him, "That is funny. Some years ago you said we could sell an A. A. Waterman pen and could sell any other make of pens but a Sterling"—in which they had a case against the Sterling Company, and now they are trying to come forward, after stating years ago that they could sell an A. A. Waterman pen, and saying that they could not sell an A. A. Waterman Company's pen at this time.

Mr. Watson: I move to strike out the answer as in-
4440 competent and hearsay.

*CROSS-EXAMINATION by Mr. Raymond:*

XQ9. Who else do you sell in Buffalo? A. The Steers Specialty Company.

XQ10. Where are they located? A. On Main Street, I don't know the number. It is in the three hundreds.

XQ11. Who else? A. I sold Schropp there, but he has gone out of business.

XQ12. Where was he located? A. He was located at Ellicott Square.

4441

XQ13. Who else did you sell? A. Do you want the names of the parties? Adam, Meldrum & Anderson.

XQ14. Do they carry any L. E. Waterman pens? A. No, sir, not that I know of.

XQ15. They carry a good many other makes, don't they? A. The only pens that I have seen in their stock are Onotos and Sterling, outside of ours.

XQ16. And Moore? A. I think so. I never have seen them.

XQ17. Who else did you sell? A. Simon Cohen. It is a pretty hard thing to remember the names of customers in the city.

XQ18. How often do you make that trade? A. Twice a year, sometimes three times a year according to how my trips are running.

4442

XQ19. It is a pretty big city is it not? A. Pretty good.

XQ20. Are those the only ones that you remember that you sell to? A. Those are the only ones I remember.

XQ21. What stationers do you sell in Buffalo? A. I don't remember of any stationers in Buffalo.

XQ22. What kind of a store does Simon Cohen keep? A. Jewelry.

XQ23. A large store? A. No, not very large.

XQ24. What kind of decorations and advertisements has he got in his window? A. Fountain pens, diamonds and jewelry.

XQ25. Has he got any A. A. Waterman signs in his window? A. I never noticed any.

4443

XQ26. Have you ever noticed any L. E. Waterman signs in his window? A. I never noticed any.

XQ27. Didn't you notice a big fountain pen with "L. E. Waterman Company" on it? A. No.

XQ28. You never noticed this big fountain pen displayed across the window? A. No, sir.

XQ29. Covering the window? A. No, there is no such sign there.

XQ30. Watermans Ideal fountain pen? A. No, sir, no such sign there that I have ever seen.

XQ31. Didn't you notice underneath it a lot of trays with pens? A. I saw the trays in the window but no signs.

XQ32. Were there not little signs displayed on those trays? A. I have not noticed the trays in the window except to see them in the window.

XQ33. You don't know what makes of pens were displayed in those trays do you? A. Yes.

XQ34. What makes? A. A. A. Waterman and Parker.

XQ35. Didn't you notice a little sign on top that says "Waterman pens $1 up"? A. No.

XQ36. Where does Mr. Cohen keep his stock of A. A. Waterman pens in the store, what part of the store? A. That I don't
4445 know.

XQ37. You have been in there a good many times? A. Yes.

XQ38. Don't you ever notice these things? A. I wished to put up a show case for Mr. Cohen, a solid plate glass case to display our pens on his case and he said that he would rather give our pens the window display than to put any more show cases on top of his case.

XQ39. Don't you know whether your pens are prominently displayed in his store? A. In his window, at times when I am not there.

XQ40. His store consists of just one side, a case on one side of a narrow store about forty or fifty feet deep does it not? A. Yes, on one side, one window.

4446 XQ41. Didn't you notice where your pens were located when you went into the store? A. He has not our pens located on any show case.

XQ42. In the show case? A. We have a show case there.

XQ43. No, one of his own show cases? A. I have never examined his other show cases.

XQ44. Did you see any L. E. Waterman pens there? A. I saw a small two dozen display of L. E. Watermans at the rear end of the show case. They were with Parker, Onoto and Conklins, three other cases.

XQ45. And the L. E. Waterman case was away at the back of the store? A. At the rear of the store.

4447

XQ46. What did Mr. Cohen say happened? Did he say who had been in there? A. He said an attorney had been in there.

XQ47. Did he show you a card? A. He could not find the card.

XQ48. He looked for it didn't he? A. He looked in one drawer for it and could not find it.

XQ49. Did he not show you a paper that had been left with him? A. No.

XQ50. What did he tell you about a printed paper that had been left with him? A. Nothing whatever.

XQ51. Did he say he had sent it in to the company? A. No.

XQ52. Repeat the conversation you had with Mr. Cohen? A. In going into Mr. Cohen's store Mr. Cohen told me he was surprised that there was an A. A. Waterman & Co. doing business at present, that an attorney and a woman had been in there. After the conversation went through with regard to the buying of a fountain pen, he presented a card stating he was an attorney. Mr. Cohen did not know him previous to that. 4448

XQ53. Did he tell you under what name he had been trying to sell this pen to this attorney? A. Under the name of A. A. Waterman & Co.

XQ54. He told you that? A. No.

XQ55. He did not tell you that he was trying to sell that pen as a genuine Waterman? A. No, genuine A. A. Waterman.

XQ56. No "genuine Waterman pen"? A. No.

XQ57. How did Mr. Cohen speak of this pen to you? A. Which pen? 4449

XQ58. The A. A. Waterman Company? A. As being a high grade piece of goods, and the best selling pens he has ever had.

XQ59. Under what name did he talk to you about these pens? A. A. A. Waterman & Co.

XQ60. Do you call that pen an A. A. Waterman & Co. pen? A. Always emphasize the words "A. A."

XQ61. Did Mr. Cohen tell you that the man who was in to see him had told him to write to the company? A. Write to which company?

XQ62. To the Modern Pen Company and ask whether he had the right to sell the pens as a Waterman pen? A. No, I told

4450

him I would report on the condition of affairs and that our firm would write to him and tell him in regard to the way he had a right to sell an A. A. Waterman & Co. pen.

XQ63. What did you call these pens? A. A. A. Waterman & Co.

XQ64. That is just the way you speak of it? A. Yes, always show the name on the barrel.

XQ65. A. A. Waterman & Co.? A. A. A. Waterman & Co.

XQ66. Will you spell that name out in full? A. "A. A. W-a-t-e-r-m-a-n & C-o-m-p-a-n-y."

XQ67. In speaking of these pens do you always slur the "and" the way you have been doing to make it sound like A. A.

4451 Waterman Company? A. A. A. Waterman & Co.

XQ68. Do you know that is the first time you have said that, the whole time you have been sitting there?

Mr. Bacon: Defendant's counsel protests on the ground that it is not true that he has slurred the "and" and it would not make any difference if he had.

Mr. Watson: The stenographer's notes will show that he has not mentioned the word "and" prior to this.

Mr. Bacon: The stenographer's notes will not so show.

XQ69. What is this A. A. Waterman & Company that you had been talking about; do you know what it is? A. In what way do I know what it is?

4452 XQ70. Is it a company? A. As far as I know it is.

XQ71. An incorporated company? A. As far as I know it is.

XQ72. You never have been told any differently? A. I never went into the story of the incorporation.

XQ73. Who is A. A. Waterman? A. I don't know Mr. A. A. Waterman. I have been employed since Mr. A. A. Waterman has been out of the firm.

XQ74. Do you know whether he is any relation to Mr. L. E. Waterman? A. No, sir.

XQ75. Didn't you tell Mr. Cohen that he was a brother of L. E. Waterman? A. No.

XQ76. Who ever spoke to you of the relationship between A. A. Waterman and L. E. Waterman? A. Nobody. I don't know of any relationship between the two.

XQ77. Did anybody tell you that they were not related? A. People have asked what the relationship of A. A. Waterman was and I told them I know of no such relationship; that A. A. Waterman used to be connected with L. E. Waterman Company and that is as much as I know.

XQ78. Who pays you? A. A. A. Waterman Company. My checks come from the Modern Pen Company.

XQ79. When you go in to see a man who do you tell him you represent? A. I present my card.

XQ80. Don't you say anything? A. I present my card and 4454
tell them I am in for the sale of A. A. Waterman Modern self-filling fountain pens.

XQ81. Don't you ever tell them who you are? A. Most of my trade know me as being from the A. A. Waterman & Company.

XQ82. You never tried to get any new business? A. Always.

XQ83. What do you do when you go in to see anyone? A. I present my card.

XQ84. You go in and say, "Here is my card" and walk out? A. No.

XQ85. What do you do? Tell them whom you represent? A. They can see on the card who I represent.

XQ86. You never say a word? A. Then I start to talk about
the good qualities of our fountain pens and try to open up a new 4455
account for the sale of our goods. I talk of the class of our stock.

XQ87. When you sell Mr. Cohen pens do you tell him how he shall sell those pens to the public? A. Yes, to be sold under the name of A. A. Waterman & Co.

XQ88. How do you tell him to sell these pens? A. To sell these pens and advertise them under the name A. A. Waterman.

XQ89. Do you do the same thing with Adam, Meldrum & Anderson? A. Yes.

XQ90. Have you ever seen any of their advertisements? A. No.

4456

XQ91. Don't you know they advertise those pens as Waterman? A. If they do I am not in the city and I don't know anything about it.

XQ92. Have you ever talked to the girl at the counter? A. Yes, the girl at the counter tells us our pens are the finest they have ever had and she insisted upon having the pen for herself which our company sent to her as a gift.

XQ93. That is the reason she tells you it is such a good pen? A. Not exactly that but she has used one out of the stock there and she did not care to use the stock.

XQ94. What does she call these pens in talking about them? A. In talking to me she explains them as an A. A. Waterman &
4457 Co. pens.

XQ95. Did you have any talk with her the time that you were there six or eight weeks ago? A. No, I had very little to say to her. Most of my talk was with Mr. Simons.

XQ96. You did not see her? A. Yes, I shook hands with her.

XQ97. Did she tell you she had sold a pen and given a written receipt as a Waterman? A. No, she did not.

XQ98. If she had done that she would have done something wrong wouldn't she?

Mr. Bacon: Objected to as immaterial; it is not for this witness but for the court to say.

Mr. Raymond: I call the court's attention to the fact
4458 that it is extremely material as to the manner in which the salesmen sell these pens to the public and it is entirely competent to show the mental attitude of the salesmen with reference to the goods of the defendant's company and the manner in which they sell them, what they believe is right and what is wrong, tending to show the manner in which they sell pens to dealers and from the dealers to the public.

A. She said nothing to me of the sale of a fountain pen.

XQ99. If she had sold one of your pens as a Waterman pen and given a written receipt for it as a Waterman pen she would have been doing something that was not right wouldn't she?

4459

A. I don't know. That is a difficult question. If she gave an A. A. Waterman Company receipt she would be giving a receipt that read, "A. A. Waterman Company."

XQ100. But if she had given a receipt as a Waterman pen when she in reality sold an A. A. Waterman & Co. pen would she be doing what was right? A. She would be doing what was right, yes.

XQ101. And you approve of such things? A. Yes.

XQ102. If a person that you sell goods to asks you whether he can sell the pen to the public as a Waterman pen you tell him yes? A. No, sir.

XQ103. What is wrong with it? A. Tell him to use the name A. A. Waterman & Co.

4460

XQ104. But you just said it was all right for them to sell it as a Waterman pen? A. You asked me about signing a receipt as a Waterman pen. Most people abbreviate in writing a receipt, especially girls in a department store.

XQ105. But if a person asks for a Waterman pen and she sells this pen as a Waterman pen, is that right? A. Yes, it is right.

XQ106. And you tell the dealer the same thing don't you? A. No.

XQ107. If dealers ask you, "Is it right for me to sell that pen as a Waterman pen when people come in and ask for a Waterman pen" what do you tell them? A. He has a right to sell it to them as an A. A. Waterman pen.

4461

XQ108. Do you tell them that it is wrong for them to sell them as Waterman? A. Yes, without using the initials A. A. Waterman.

XQ109. You just said it was all right for this girl? A. You asked if it was all right if she signed it on the receipt as the sale of a Waterman?

XQ110. You think there is a difference then between what people say and what they write? A. In a receipt I do.

XQ111. Do you know any pen that is called a Waterman pen? A. A. A. Waterman & Co.

4462 *Max L. Blatz*

XQ112. Is that the only one you know? A. L. E. Waterman Company, a pen that I have run across on the road that the name has been cut off on the barrel by fakirs as a Waterman pen.

XQ113. Under what name do dealers call pens made by L. E. Waterman? A. Some call them L. E. Waterman Ideal. Others call them Waterman Ideal. Others call them Ideal.

XQ114. They don't call them Waterman's pens? A. No, they always say L. E. Waterman or Waterman's Ideal or Ideal.

XQ115. Why don't you when you go in a store say that you represent the Modern Pen Company and are selling the Modern pens? A. Because I always present the card.

4468 XQ116. Don't you say you are selling A. A. Waterman Modern pens? A. I sell A. A. Waterman Modern pens.

XQ117. Don't you use the word Waterman just to get an audience with people who don't know the word Waterman in connection with fountain pens? A. People know the name of Waterman the same as any other pen.

XQ118. They know that name in connection with fountain pens? A. They know them without the name Waterman and they know the name A. A. Waterman & Co.

XQ119. You never find any confusion between them? A. If there is any confusion at any time I always state to the public or the people interested in it that there are two distinct houses A. A. Waterman & Co., and L. E. Waterman Company.

XQ120. Don't you find a great deal of that confusion? A. 4464 Not very much over my territory.

XQ121. When you go in to see a man just opening up business and you say, "I am selling A. A. Waterman & Co. pens" does he ask you which Waterman pens you are selling? A. I always state A. A. Waterman & Co.

XQ122. Does he ever ask you whether there is any other Waterman in the business? A. Yes.

XQ123. A man new in the business? A. A man new in the business, if he is opening a store he has had connection with business in some way.

XQ124. You find that they universally know that there are two concerns A. A. Waterman & Co. and L. E. Waterman Co.? A. Yes.

4465

XQ125. No matter where you go you find people know that? A. People know it. The territory that I am in, New York State and New England, is known as being the two houses, the A. A. Waterman & Company and the L. E. Waterman & Company, both doing business in the City of New York. That is the way it is always stated by me and if I covered that ground again they always know me as being the representative of A. A. Waterman & Co. In the City of Boston I never use the card stating who I am as I am well known there and our line is well known.

XQ126. What did they tell you at Adam, Meldrum & Anderson's? A. They told me there had been an attorney in there and said to them that they had no right to sell A. A. Waterman & Co. pens.

4466

XQ127. Did they not tell you that the attorney who was in there bought a pen and had a written receipt for it as a Waterman? A. No.

XQ128. They did not tell you that was what was complained of? A. No, I did not know anything about that.

XQ129. Did they show you a copy of an injunction that had been left there? A. No.

XQ130. Did you see Mr. Bushnell? A. No.

XQ131. You did not see the head man? A. Yes.

XQ132. Who? A. Mr. Simons.

XQ133. You saw Mr. Simons? A. I saw Mr. Simons.

XQ134. Did they still have A. A. Waterman & Co. pens there when you were there? A. Yes, I sold them another order.

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XQ135. Did you tell them how they should sell those pens? A. As A. A. Waterman & Co. and advertise them as such and I am to put in a window display at Adam, Meldrum & Anderson to be advertised as A. A. Waterman & Co.

XQ136. Did Mr. Simons tell you they had also advertised those pens as Waterman pens? A. No.

XQ137. Did he ask you if he could advertise them as Waterman pens? A. No, he knows better. He advertises them as A. A. Waterman & Co.

XQ138. It would be wrong for him to advertise them as Waterman pens? A. We always advertise them as A. A. Waterman & Co.

XQ139. It would be wrong to advertise them as Waterman pens?

Mr. Bacon: Objected to as it is not for this witness to speak on the question of morals.

XQ140. Where is Mr. Schropp? A. He has opened up in the manufacture of jewelry. His location in Buffalo I don't know.

XQ141. Didn't you sell a man down on Exchange Street who had a big window display of pens? A. None that I can remember.

XQ142. You don't remember that? A. No.

XQ143. You would remember if you sold him wouldn't you?
4469 A. I don't know that I would remember exactly the people I sell. I cover a big territory. It is hard to remember every person that I sell.

XQ144. Do you sell a single high class store in Buffalo? A. Yes.

XQ145. Which one? A. Adam, Meldrum & Anderson.

XQ146. That is the only one? A. Steers Company.

XQ147. What kind of a store do they keep? A. Specialties and novelties.

XQ148. What do you mean by novelties? A. Fancy special hat pins and stick pins. They have got an assortment of goods in there.

XQ149. Did you speak to the young lady in there? A. No,
4470 I talked with Mr. Dodge, the president of the company.

XQ150. Did you tell him how he should sell the pens to the public? A. Yes, always sell them A. A. Waterman & Co.

XQ151. You told Mr. Dodge, "Mr. Dodge, you must sell these pens to the public only as A. A. Waterman & Co. pens"? A. A. A. Waterman & Co.

XQ152. "You must not sell these pens as Waterman." You told him that? A. Yes.

XQ153. "You must not sell these pens as L. E. Waterman pens or Ideal pens"? A. Our pens are never sold as L. E. Waterman pens.

XQ154. Did you tell him that? A. That he must not sell them as L. E. Waterman?

XQ155. Yes? A. He would not sell them as such. They are not marked as such.

XQ156. Did you tell him not to sell them as that? A. No, not to sell them as L. E. Waterman pens.

XQ157. You did not tell him that? A. No.

XQ158. But you told him not to sell them as Waterman? A. Not to sell them as Waterman; to sell them as they are marked A. A. Waterman & Co.

XQ159. And not to speak of them to the customer as Waterman pens? A. Not as a Waterman pen, but as an A. A. Waterman & Co.

4472

XQ160. Do you know that they sell pens in the store as Waterman pens? A. As A. A. Waterman and as L. E. Waterman Ideal pens.

XQ161. Do they carry L. E. Waterman pens A. Yes.

XQ162. How many stationery houses are there in Buffalo? A. I don't know.

XQ163. Don't you call on them? A. I couldn't tell the number.

XQ164. Don't you call on them? A. Yes.

XQ165. Just name some of those that you call on? A. I can't name them.

XQ166. Did you ever call on the Vosburg Whiting Co.? A. Yes.

4473

XQ167. Do they carry A. A. Waterman pens? A. No, they carry L. E. Waterman and Paul E. Wirt.

XQ168. Do you ever call on the Whiting Stationery Company? A. Yes.

XQ169. Did you ever sell them any goods? A. No.

XQ170. These two concerns I have just mentioned are about the largest concerns in Buffalo are they not? A. Not that I know.

XQ171. Are they not two of the largest stationery concerns in Buffalo? A. I don't know that the Whiting Stationery Company is so big.

XQ172. You know Vosburg & Whiting? A. Fairly good.

XQ173. They are only fairly good? A. I should consider them so.

XQ174. Who is the leading stationer in Buffalo? A. I don't know.

XQ175. Do you know anybody bigger than Vosburg, Whiting & Company in Buffalo? A. No, I do not.

XQ176. Do you sell any of the leading jewelers in Buffalo? A. Not outside of Adam, Meldrum & Anderson and Simon Cohen.

XQ177. Who do you sell in Rochester? A. Scranton, Wetmore & Company.

4475 XQ178. Is that the only concern in Rochester? A. The only one. We have a contract with them.

XQ179. Do you know how they sell the pens to the public? A. While I am there, yes.

XQ180. That is all that you do know is it not? A. They are instructed to sell them as A. A. Waterman & Co. fountain pens.

XQ181. Who gave them those instructions? A. I did.

XQ182. Who gave you those instructions? A. My firm.

XQ183. Did you ever run across any dealers that are sold by Scranton & Wetmore? A. Yes.

XQ184. Where? A. Medina, N. Y.

XQ185. How about Sodus, N. Y.? A. I have never been at

4476 Sodus.

XQ186. Do you run across many dealers who are sold by Scranton & Wetmore? A. They cover smaller towns than I do and I would not come in contact with their trade.

XQ187. Whom did you find in Medina, N. Y., that were sold to by Scranton & Wetmore? A. A drug firm. I don't remember the name; two men, partners.

XQ188. How do they sell the pens to the public? A. I suppose they sell them as A. A. Waterman & Co. as the show case and the goods calls for and their advertising.

XQ189. Did you tell them to sell pens as only A. A. Waterman & Co. pens? A. No.

XQ190. You don't know how they sell goods to the public? A. As far as I know as A. A. Waterman fountain pens.

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XQ191. Whom did you talk with of the Modern Pen Company with reference to how you were to sell the pens to the public? A. Mr. Martling and Mr. Geyer.

XQ192. When did you have that conversation? A. When I first went to work for the firm. I have always had my instructions.

XQ193. Have you ever had any written instructions? A. I don't remember.

XQ194. You would remember if you had them wouldn't you? A. I have had quite a little correspondence and written questions to state to the public. I don't remember just exactly what they were.

4478

XQ195. Have you ever had any stock of pens returned to the Modern Pen Company on the ground that they had been bought under the apprehension that they were L. E. Waterman pens? A. Never in my territory.

XQ196. Never have known any case like that? A. No, all the people that buy our pens always contended that they know the A. A. Waterman.

XQ197. Have you had any complaint so that you had to go and see people and explain the pens? A. No, sir.

XQ198. Never had that occur at all? A. No.

XQ199. You are sure of that? A. Positive.

XQ200. When did you have your last conversation with Mr. Geyer with reference to how these pens should be sold? A. I have always had instrutcions about that.

4479

XQ201. How long ago was it—a year ago? A. I don't know any exact date. I could not say whether it was a year ago or six months ago.

XQ202. You had some instructions just a few minutes ago didn't you? A. From whom?

XQ203. From Mr. Geyer? A. As to what?

XQ204. As to the name under which you sell these pens? A. No.

XQ205. Did not have any conversation with him about it at all? A. Not with regard to how to sell these pens, no. I have always sold them under the name of A. A. Waterman & Co.

4480

ever since I went to work with the firm. I never sold them under any other name. I knew that was my business and followed my first instructions.

XQ206. Do you sell these pens on commission? A. Yes.

XQ207. Salary? A. No.

XQ208. Altogether commission? A. Yes.

XQ209. The more you sell the more you make? A. Yes.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ210. You have a drawing account I suppose, so much a week? A. Yes.

4481

RDQ211. Have you one of your cards with you? A. I don't know. They are all in my overcoat.

RDQ212. Where is your overcoat? A. Over in the office.

RDQ213. Your card gives your name, representing the Modern Pen Company, sole selling agents for A. A. Waterman & Co. does it not, or something similar to that? A. Yes. (Witness produces a card.)

Mr. Bacon: The witness produces a card. On the upper left-hand corner of it is Max L. Blatz. In the middle of the card "Modern Pen Company, 22 Thames Street, New York." On the lower right-hand corner, "Sole selling agents for A. A. Waterman & Co." On the lower left-hand corner "Modern self-filling and middle joint fountain pens."

4482

Objected to as incompetent, irrelevant and immaterial.

RDQ214. If a girl in some department store sells a man an A. A. Waterman pen and tells him it is an A. A. Waterman and then he inveigles a receipt out of her, and she puts on it "1 Wat. pen," you would not consider that an unpardonable sin, would you? A. No.

4483

DEWITT C. VAN VALER, a witness called on behalf of the defendant, being duly sworn, testified as follows.

*Direct-examination by Mr. Bacon:*

Q1. State your name, residence and business? A. DeWitt C. Van Valer; residence, 134 Oak Street, Richmond Hill, Long Island; business, gold pen maker by trade; superintendent for A. A. Waterman & Co. at present.

Q2. How long have you been in the manufacture of gold pens? A. Over twenty-five years.

Q3. How long have you been engaged in the manufacture of fountain pens complete? A. About ten years, I should judge.

Q4. You are superintendent of the factory of A. A. Waterman & Co.? A. Yes. 4484

Q5. And have been for how long? A. Since they have been in existence I guess. I can't tell you exactly.

Q6. That is, you were with the old firm of A. A. Waterman & Co. and Frazer & Geyer Company? A. Yes.

Q7. Have you ever been familiar with the manufacture of pens in other factories than that of Frazer & Geyer Co. or A. A. Waterman & Co.? A. I have, yes.

Q8. What were they? A. What makes?

Q9. Yes, what factories have you been connected with? A. William S. Hicks, John Foley, Sr., Edward Todd & Co. For a matter of a few months I was with a man named Davidson. I went there with a view of taking a partnership and dropped him. 4485

Q10. Have the Frazer & Geyer Company and the present firm of A. A. Waterman & Co. manufactured the complete fountain pens at all times since you have been with them?

Mr. Watson: Objected to as immaterial.

A. They have.

Q11. Are you familiar with the L. E. Waterman Company make of pens? A. In a general way.

Q12. Hundreds of them come into your factory every week for repair? A. They do.

4486

Q13. What proportion of those L. E. Waterman Company pens that come in to be repaired have the joint under the finger, the end joint I believe it is called? A. Ninety per cent; in fact one hundred per cent. I don't know anything about any other holder that they make other than that with their name on it.

Q14. If they do they are very few? A. They are very few if any.

Q15. What is generally the matter with the fountain pen holders of the L. E. Waterman Company make? A. As a usual thing they leak at the joint and what we call in the factory sweat, due to faulty construction.

Q16. Have the L. E. Waterman Company been making the
4487 same form of end joint pens ever since you can remember? A. They have.

Q17. Has there been any substantial change in the make of their pens in the last twenty years? A. Not that I have been able to see.

Q18. As far as you can judge from an examination of the pens that come in they make the same pens today that they did twenty years ago? A. There might be some slight variation in the shape of the holder, that would not hardly attract attention unless examined closely.

Q19. Can an A. A. Waterman & Co. self-filling pen leak at any part of the holder? A. No.

Q20. There is no joint in it at all is there? A. No, there is
4488 not a joint properly speaking.

Q21. The section is joined to the barrel by cement, is it not? A. Yes.

Q22. And you do not have to unscrew it in order to fill it? A. You do not.

Q23. As you do with the ordinary Ideal pen? A. You do not.

Q24. And with the ordinary Ideal fountain pen, the end joint pen, every time the pen is filled it wears out the screws in the section, does it not? A. It has a tendency to wear them.

Q25. And as the pen gets older it begins to leak? A. Undoubtedly, it will mar the facing.

4489

Q26. Have you ever heard a complaint of the L. E. Waterman Company pens leaking when nearly empty? A. Yes.

Q27. That is a universal complaint? A. It is general.

Q28. Will you explain in your own words the different processes in the manufacture of gold pen points beginning with the preparation of the gold?

Mr. Watson: Objected to as immaterial to any issue in this case.

A. The pure gold is purchased from the Government through a broker. I take it and alloy it by the use of copper and silver, C. P., to 14 karat or 583-1/3 fine. It is then passed through a set of rolling mills to a pre-determined gauge or thickness.

4490

Q29. And is put into bars? A. After it is alloyed it is then passed through the rolling mill. I have skipped the melting of it.

Q30. It is first melted? A. It is first melted into a bar and then it is passed through a rolling mill, down to the gauge required for the thickness of the blank. The blanks are then cut from the bar.

Q31. I show you a card and ask you if this shows the different steps in the procedure of the manufacture of a pen (showing witness a large card with portions of pens fastened upon it)? A. It does.

Q32. The blank, technically so-called, is the first step that you have indicated on the card? A. Yes.

4491

Mr. Bacon: I will letter it A.

Q33. What is the next step? A. The notching of the blank.

Mr. Watson: I move to strike out all this line of testimony as immaterial and irrelevant.

Q34. That is done by machinery? A. Yes.

Q35. Skilled or unskilled labor? A. It requires skilled labor.

Q36. Then after the blank is notched what is next? A. It is then ready to receive the iridium point.

4492

Q37. Tell us about the selection of the iridium? A. We employ a man who is perfectly competent to judge as to the various qualities of the iridium which may be handed to him and he selects either one or two pieces which are perfect in every respect and places them on this blank which has been prepared for that purpose.

Q38. Is he a man of the highest skill and the highest wages? A. He is.

Q39. He is a skilled workman of the very highest degree is he? A. He is.

Mr. Watson: I move to strike out all this testimony as

4493 immaterial and irrelevant.

Q40. And he uses a magnifying glass in selecting these points? A. He does.

Q41. Of the ordinary iridium of commerce what proportion will he retain and what proportion reject?

Mr. Watson: Objected to as immaterial and I move to strike out all this line of testimony as immaterial to any issue.

A. We will reject probably between 50 and 60 per cent of that which can be furnished at the present condition of the market.

Q42. Then after the iridium is put on the point what is done next? A. The blank is then rolled to the thickness the finished

4494 pen shall be.

Q43. Always taking care not to disturb the iridium I suppose? A. Yes, the iridium is protected throughout all these operations.

Q44. How is the iridium put on the point? A. It is selected under a magnifying glass and laid in position, and a blank then laid on to a piece of prepared charcoal; a fine point of flame brought in contact with the end of the blank that contains the iridium; by the aid of a blowpipe the gold being melted. As it hardens the iridium becomes embodied in it.

Q45. And whether this work is well done or not depends upon the personality of the operator? A. Yes.

Q46. Then comes the rolling? Is that done by skilled or unskilled labor? A. Skilled labor.

Q47. And by machinery A. By a machine, yes.

Q48. How many machines do you use in that process? A. Three or more.

Q46. Then after the rolling what comes next? A. The blank is then tempered.

Q50. How is that done? A. In our case by a process of hydraulic pressure.

Q51. In other factories is it usually done in that way? A. It is not.

Q52. Have you ever known it to be done in that way in any other factory? A. I have not.

Q53. Is this hydraulic press your invention? A. I brought the idea out. Yes, it is my invention. 4496

Q54. How do other poeple usually temper the gold? A. By what is known as hammering—planishing.

Q55. Is it hammered by hand or by triphammer? A. Some manufacturers use a triphammer. Some of them use a hand hammer.

Q56. Is it possible to get a pen as homogeneous by that method as by the hydraulic press? A. It is not.

Q57. What comes next? A. The pen is then cut out of this blank.

Q58. How much ton pressure do you get in this tempering by the hydraulic press? A. It ranges from fifteen to twenty tons exerted on each individual blank as recorded by gauge on the press. 4497

Q59. And that makes it very dense and homogeneous does it not? A. Yes.

Mr. Watson: Objected to as immaterial and the Court's attention is called to the unnecessary padding of the record; also to the leading character of the questions.

Q60. What comes next? A. The pen is cut from this blank?

Q61. Is that done by machinery? A. Yes.

Q62. What is next? Go right on? A. After the pen is cut from the blank it is taken to machines and the name is stamped on, certain pierce holes are pierced in. From that point it is

4498 taken to what is known as the raising machine and is raised into shape.

Q63. Does each set of pens have its individual set of tools? A. Yes.

Q64. Each separate pen? A. Each separate pen has its own individual set of tools.

Q65. After the raising? A. It goes to the setting up bench and is put through a series of hand burnishers. From that point it goes to the slitting machine and a slit is cut in.

Q66. In the slitting is there anything peculiar in your factory that is not found elsewhere? A. We start the slit from the pierce hole and cut forward towards the iridium point for a
4499 short distance, making it possible for the man doing the slitting to have the slitter enter the pierce dead center and without this aid there is great danger of having crooked slits in pens.

Q67. And this partial slit from the pierce hole outwards is individual to your factory is it? A. So far as I know.

Q68. How thick is the copper disc that does the slitting? A. About four and a half one-thousandths (.0045) of an inch in thickness.

Q69. Then after the pen is slit what happens? A. The pen goes back to the setting up bench and goes through a series of hand burnishing and what is commonly called setting. From that point it is partly polished and then given to the grinders. They grind the iridium point into the shape that a gold pen
4500 should be, thereby removing all gold from the surface of the iridium. After doing so they make use of certain well established cuts, known as face cuts, side cuts, shamper cuts and end cuts.

Q70. There are eight of them in all? A. There are eight cuts, properly speaking.

Q71. After the grinding what is done? A. The pen is then smoothed, which consists of polishing the iridium in such manner as to so dull the edges of these cuts that there is no possibility of their scratching, cutting or digging into the paper. The pen is then submitted for inspection to myself; then sent for a final polish; returned to me for further inspection, consisting of

4501

trying each one individually on paper. If found all right, it is ready then for use.

Q72. How often is the pen tried on paper before it is passed? A. It is tried numerous times by the man doing the work and finally by myself; two different persons trying it at numerous times.

Q73. And you turn out how many a day on an average? A. About six hundred.

Mr. Watson: I move to strike out all the testimony in regard to the details of manufacture as in no way material or relevant to this action.

4502

Q74. How many distinct classes of machines do you use in the operation of manufacturing a pen point?

Mr. Watson: The same objection and motions.

A. Without running all over them in my mind, I think there are about fifteen; that is distinct, different machines.

Q75. Now kindly describe in your own language the manufacture of the fountain penholder; begin at the first and go right on.

Mr. Watson: Objected to as immaterial.

A. The rough stock is furnished to the factory. It is a vulcanized hard rubber in the form of a long tube or barrel, a certain length, and with a cap of a certain length. For the pur- 4503
pose of making the sections it is in tube form, of certain lengths.

Q76. It comes to you all cut? A. No, the feed rod we receive in the same manner. Such of this as we are going to use we cut into proper lengths.

Q77. You buy it by the pound? A. Yes.

Q78. Of the American Hard Rubber Company? A. Yes.

Q79. Can any better be bought in the market? A. No.

Q80. It is the best known, is it? A. It is the best hard rubber there is produced.

Q81. And the highest grade? A. Yes.

4504 *DeWitt C. Van Valer*

Mr. Watson: Objected to and a motion to strike out as immaterial and irrelevant; there is nothing to show that this witness is qualified to judge of hard rubber.

Q82. You have dealt in hard rubber a good many years? A. I have handled it for the last ten years.

Q83. Buying and selling it all the time? A. Not in purchasing it but handling it as it came from the factory.

Q84. You have had it from different sources? A. Had it from different sources.

Q85. Kindly go on. Begin with the turning? A. The barrels are given to a man who is a competent rubber turner and
4505 he turns the barrel with the aid of a properly constructed turning lathe and such hand tools as he finds necessary to use, to a stated size and shape. The cap is likewise turned. The sections are given to men trained to do that kind of work and they shape the sections and cut the threads thereon and fit the sections to the barrels, each barrel being fitted individually and no attempt made to have the sections interchange.

Q86. The section is the part into which the feed and the pen are inserted? A. Yes.

Q87. The lower end of the pen? A. Yes.

Q88. It is generally less than an inch long? A. Yes.

Q89. And is either screwed or cemented on to the barrel? A. Yes.

4506 Q90. In the case of end joint pens such as the Ideal, it is screwed on? A. Yes.

Q91. In the case of the A. A. Waterman self-fillers it is cemented? A. Yes.

Q92. And never comes off? A. Not unless it is taken off.

Q93. But in the factory each section is fitted individually to its barrel? A. Yes.

Q94. So as to have the contact perfect? A. Yes.

Q95. And that is essentially necessary is it, in end joint pens? A. It is.

Q96. You do not make up a thousand barrels and a thousand sections and then have somebody assemble them and put them together? A. No.

4507

Q97. The man who makes the section makes it with special reference to a particular individual barrel? A. Yes.

Q98. Is that the usual way that sections are joined to the barrel in ordinary factories? A. They are not so particular in the matter.

Q99. In factories where they assemble parts only is each section manufactured with reference to any particular barrel?

Mr. Watson: Objected to as incompetent and not shown to be within the knowledge of this witness?

A. I don't exactly understand the question.

Q100. What do you mean by assembling parts—putting the section on to the barrel and the feed into the section, or simply taking a completed barrel and putting the feed in it? A. Mechanically assembling, to me, consists in placing the pen and the feed into the holder. 4508

Q101. After the section is manufactured what is the next step? A. The turned holder is then ready for polishing. After being polished they are reamed for the fitting of the feed and also for the fit of the pen, and got ready for assembling.

Q102. Then the manufacture of the feed is a special department by itself? A. Yes, the feed is made from the feed rod spoken of before, cut the proper length. They have very accurate tools for that purpose and require highly skilled labor.

Q103. What do you mean by chasing? A. That is working a design on the side of the holder by the aid of automatic machines. 4509

Q104. It has appeared in evidence that the L. E. Waterman Company after receiving the completed penholders from Day's factory in Connecticut, sometimes do chasing. Will you explain to the Court just what that consists of? A. There is an automatic machine used for the purpose, on which you can place six fountain pen barrels or six caps, as the machine is set. A lever is thrown, by anybody, either experienced or inexperienced, and the machine does the work. When it has completed its work it stops automatically. Anybody can remove the work and put another lot on.

4510

Q105. Then an unskilled boy or girl can use this automatic machine and can do the chasing? A. Yes.

Q106. It simply means putting decorating figures on the outside of the barrel? A. Yes.

Q107. What do you mean by a shoulder cap, having a two-point contact? A. That is for the purpose of preventing the cap from having any shaking after it is placed on the barrel. It is used to make a perfect fit; peculiar I believe to our manufacture alone.

Q108. Does it take any machinery to do the assembling? A. No.

4511

Q109. And does it take skilled workmen of the highest class or a mediocre class to do that work? A. We ourselves use skilled labor but I suppose it could be taught, but personally I think it requires a gold pen maker to put pens in holders and properly safeguard the gold pen which is the foundation of the whole article, after all is said and done.

Q110. After the pen is completed and tested and inspected at these various times what test do you make as to its being all right? A. After the holder is completed?

Q111. Yes. Do you have a testing machine? A. Yes, we have a machine upon which we place the holders and subject them to at least six pounds pressure, to prove that they are perfectly tight and will in no way leak around the joints, or anywhere else.

4512

Q112. Do you know of any other factory that uses this testing machine? A. Not in the form we have it; I have never heard of anybody using it.

Q113. Is that a comparatively new invention of your own? A. It is.

Q114. How does the self-filler vary structually from an end joint pen? A. From the fact that it has no threaded section; and it is composed of a head screw-plug and a pin to hold the head on and a soft rubber tube and is necessarily constructed very much differently from an end joint.

Q115. And it is absolutely impossible for it to leak and get on your fingers? A. Yes. The ink is contained in a soft rubber sack.

4513

Q116. It also has the barrel, cap and section like an ordinary pen? A. Yes.

Q117. Have there been any improvements made in the self-filling pen of recent years so as to make it stronger and better; if so state what they were. How about the button? A. Yes, in the matter of the button, it has been slightly enlarged and made to conform more to the shape of the holder in general, to make the whole article more strong and symmetrical.

Q118. That is, you have made the button longer and you have made the section shorter? A. The section has been made shorter and the button longer.

Q119. And the casual observer would not know that there was any section there at all? A. No.

4514

Q120. There is no screw and the cement is such that it is not possible for it to leak? A. No.

Q121. How long do you warrant these inside rubber sacks? A. Two years.

Q122. How long do they usually last? A. Six or seven.

Q123. Do you have any complaints as to those sacks breaking? A. A very small percentage.

Q124. If the sack is kept filled, that is, moist with ink, it will last very much longer than if it is neglected I suppose? A. Yes.

Q125. Do you have many complaints of the button being twisted off by people who are careless in the use of the pen? A. We do not. They are very strong.

4515

Q126. Have they been improved in that respect of late years? A. In so far as I have stated before; they have been made larger thereby giving them a greater wall and more strength, but it was done principally to improve the general appearance as well as to strengthen.

Q127. Then the complaints from twisting off the barrel are very rare indeed are they? A. We have very few of them.

Q128. What do you have to say as an expert of twenty-five years experience in the manufacture of pen points and completed fountain pens, whether in the present state of the art a

4516 better pen can be made or ever has been made than the present self-filler and middle joint made by A. A. Waterman & Co.?

Mr. Watson: Objected to as incompetent; there is nothing to show that this witness has had any experience with any other pens except the ones that he has made himself.

A. I cannot conceive of any way that any fountain penholder could be made any better than that which is made by A. A. Waterman & Co. at the present time.

Q129. In their highest grades? A. In their highest grades.

4517 Q130. When you get down to low grades, very cheap pens, you use manufactured iridium? A. We do.

Q131. In some of the cheap grades, the less carefully selected iridium? A. Yes, not the care exercised in selecting it.

Q132. Then pen that you sell at wholsale for 25 or 30 cents does not have the same quality of iridium as one that would sell for 50 cents or 75 cents? A. No, not at this present time or within the last few years back.

Q133. Do you ever have any complaints of the middle joint pen being weak at that joint? A. I cannot recall any complaint. I have seen one or two broken but out of the quantity manufactured it is hardly worth speaking of.

Q134. And the middle joint pen and the self-filler pen are the specialties of A. A. Waterman & Co.? A. They are.

4518 Q135. And what is the object of having the joint in the middle instead of on the end under the finger? A. Because of the fact that some people prefer it; they want something a little different from the old style end joint; it appeals to a great many people.

Q136. Is it apt to leak under the finger? A. It is not for the reason that the joint being so far from the finger, should a leak occur there is no danger.

Q137. You have compared the A. A. Waterman self-fillers and the middle joint pens with the best quality of the L. E. Waterman pens and what have you to say as to a comparison?

Mr. Watson: Objected to as incompetent and improper in form.

A. That I consider the A. A. Waterman pen superior from the standpoint of a mechanic and would undoubtedly prefer the A. A. Waterman for my own personal use because of the general differences in them. The A. A. Waterman & Co. pens are undoubtedly better constructed; that more care has been exercised, as is very apparent.

Q138. And the style of construction, of the self-filling pens especially, do you consider that preferable to the end joint? A. I consider it the highest type of fountain pen that has ever been produced. 4520

Mr. Bacon: I will introduce in evidence this card which shows the different processes, through which the pen is put in its manufacture.

Marked Exhibit A-67.

Mr. Watson: Objected to as immaterial and irrelevant.

Mr. Bacon: I also offer in evidence six cards showing the methods of manufacture.

Marked Exhibit A-68.

Mr. Watson: The same objections.

*CROSS-EXAMINATION by Mr. Watson:*

XQ139. Seventy-five per cent of the pens that A. A. Waterman & Co. make are what you call end joint pens are they not? A. No. 4521

XQ140. What percentage is it? A. I don't know.

XQ141. The testimony in this case is that more than fifty per cent of the pens you make are end joint pens; is that correct?

Mr. Bacon: Objected to.

XQ142. If there is testimony in this case that there are more than fifty per cent of the pens of A. A. Waterman make end joint pens, is that correct? A. I don't know. I would have to have the books to tell you that.

XQ143. A very large percentage of your pens are end joint pens aren't they? A. We make quite a lot but I don't know anything about percentage.

XQ144. All your Lincoln pens are end joint pens, aren't they? A. We don't make them.

XQ145. You don't make any pens marked Lincoln? A. No.

XQ146. How long since? A. We make them, yes; but not many of them.

XQ147. All of those are end joint pens are they not? A. Yes.

XQ148. You are not prepared to say that fifty per cent of the pens that you make are not end joint pens? A. No, I cannot say anything about it because my mind is not clear on the matter of percentages at all.

4523

XQ149. Have you ever had anything to do with the manufacture of rubber? A. No.

XQ150. Do you know anything about the constituents of hard rubber? A. No.

XQ151. Never had anything to do with the manufacture of hard rubber in any shape? A. No.

XQ152. Do you have any pens returned to you that are discolored and sunburnt, etc.? A. Very few of our own make. We very often have lots of other people's that come in that turn green and yellow and one thing and another.

XQ153. Do you buy the hard rubber yourself or does somebody else connected with the firm buy it? A. It is ordered generally. I generally hand a ticket to Mr. Geyer and he orders it.

4524

XQ154. You do not know the grade of hard rubber that is ordered? A. It is always the best that can be produced.

XQ155. I asked you if you knew the grade of hard rubber that is ordered? A. It is the best that can be produced.

XQ156. The question is repeated. I want an answer? A. I know it by seeing it surely, but I don't understand the nature of the question.

XQ157. You do not personally order the hard rubber from the American Hard Rubber Company? A. No.

4525

XQ158. You see the rubber that is furnished? A. Yes.

XQ159. That is all you know about it? A. Yes, if it is not right I know it.

XQ160. Did you ever use any other rubber except that which you get from the American Hard Rubber Company? A. Only as sample lots that salesmen will naturally force on to us to try out.

XQ161. Where does that come from? A. I have had sample lots sent in to me. I don't know where it comes from.

XQ162. Did you ever have any rubber from H. P. & E. Day's factory at Seymour, Connecticut? A. I don't know.

XQ163. As matter of fact you don't know where it comes from except as you are told, do you? A. Yes, that is right. 4526

Adjourned to Thursday, April 20, 1911, at 10:30 A. M.

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UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
vs. 4527
MODERN PEN COMPANY,
Defendant.

Met pursuant to adjournment at the office of Alexander S. Bacon, 37 Liberty Street, New York, April 20, 1911, at 10:30 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Complainant.
Alexander S. Bacon, for Defendant.

DEWITT C. VAN VALER, resumed the stand:

*Cross-examination continued by Mr. Watson:*

XQ164. When did you first begin to work for A. A. Waterman & Co.? A. When they were organized, with the Frazer & Geyer Company. I presume that was the first.

XQ165. About 1901? A. I could not state as to the date.

XQ166. Was that the approximate time, 1901? A. Yes, it was.

XQ167. And you have been with them ever since? A. Yes, ever since.

4529 XQ168. And all this time in charge of their factory? A. Yes.

XQ169. Were you in charge of the factory when you first went with them? A. No, I was not; that is, with the Frazer & Geyer Company I was not.

XQ170. The factory where the pens stamped A. A. Waterman & Co. were made when you first went with them was the Frazer & Geyer factory was it not? A. I should have to think for a minute about that. I worked for William G. Frazer & Co. first and I don't know just when A. A. Waterman & Co. came in.

XQ171. Do you recall when you first went to work for William G. Frazer & Co.? A. Yes.

XQ172. When was it? A. It was in 1897.

4530 XQ173. And you continued with William G. Frazer & Co. for how long? A. As long as it remained in business, as far as the factory was concerned.

XQ174. And then with whom did you go? A. I presume it was A. A. Waterman & Co. that followed them.

XQ175. Did you ever work for Frazer & Geyer Company? A. Yes.

XQ176. When did that come in? A. Between the period of William G. Frazer and the organization of Frazer & Geyer Company.

XQ177. What periods have you worked for A. A. Waterman & Company? A. From the time that they established themselves as such in New York to the present time.

4531

XQ178. And when did they establish themselves in New York to your best recollection? A. It must have been prior I think to 1900.

XQ179. During what period if any did you work for the Frazer & Geyer Company? A. From 1897 until the Frazer & Geyer Company went out, if they are out; I don't know.

XQ180. You have given the names of the factories of William S. Hicks, John Foley, Sr., and Edward Todd and a man named Davidson for whom you worked. Will you state in what order you worked for these people? A. I went to work first with William S. Hicks, learned my trade there.

XQ181. When was that? A. I think it was either in 1884 or 1885. I cannot fix the exact year. It was either one or the other.

4532

XQ182. How long did you stay with Hicks? A. About five years.

XQ183. Where did you go next? A. I went with John Foley, Sr., and remained with him for a period of close to two years, I should judge.

XQ184. Then with whom? A. With Edward Todd in Brooklyn.

XQ185. How long with him? A. I remained with him I think between six and seven years. From there I went with Davidson and remained but a short time. I don't think it was in all a year. Then I entered the employ of William G. Frazer. I don't know whether it was a company or whether it was just William G. Frazer; I cannot tell you that. It might have been the Frazer & Geyer Company at that time. I cannot say.

4533

XQ186. What was your position with Edward Todd? A. I entered their employ as a grinder and afterwards was given the repair work to do and that carried with it a sort of honorary position as assistant foreman.

XQ187. Have you ever been in other pen factories, gold pen factories, than these you have mentioned? A. Except Armeny & Marion.

XQ188. When were you in their factory? A. It must have been either 1898 or 1899 or somewhere about that period.

4534

XQ189. That was the period you were working for Mr. Frazer or Frazer & Geyer Company as the case may be? A. No.

XQ190. Before that? A. I think in 1888 or 1889. That was about the time I was finishing my trade.

XQ191. And you have not been in any other gold pen factory except these you have named? A. Except Armeny & Marion; that is all.

XQ192. When were you last in Edward Todd's factory? A. It must have been in 1895 or 1896, somewhere along there as near as I can fix it.

4535 XQ193. You have not had any occasion to go to the Edward Todd's factory since that time? A. I do not recall ever visiting it.

XQ194. Have you ever been back to Mr. Davidson's at any time since you left his employ? A. No.

XQ195. Have you ever been back to the Foley factory since you left his employ? A. No, not to his factory. He sends for me about once a year to go and see him at his office.

XQ196. Have you ever been back to Mr. Hicks' factory since you left his employ? A. I think I have been in their office, called there.

XQ197. But never have been in their factory? A. No.

XQ198. Then you have not been in any other gold pen factory since you first went with Mr. Frazer in 1897 until the

4536 present time, except this factory where you are employed? A. That is right.

XQ199. And you do not know what method or machinery is employed in other gold pen factories since 1897 except from hearsay? A. That is right.

XQ200. You have never been in the gold pen factory of the L. E. Waterman Company? A. No.

XQ201. Nor in the gold pen factory of the Fairchilds? A. Not in the factory.

XQ202. You know that there is such a concern as Fairchilds that make gold pens? A. Yes.

4537

XQ203. And the present Fairchilds and his father have been in that business as long as you have been in the business, have they not? A. Yes.

XQ204. A well known concern? A. Yes.

XQ205. Who are the other well known gold pen manufacturers that you know of in the United States? A. In addition to those that I worked for?

XQ206. Yes. A. Mabie, Todd & Company.

XQ207. They are a concern of long standing and good repute? A. Yes.

XQ208. The reputation of their gold pens is among the best in the market is it not? A. Up to five years ago they were. I guess John Holland of Cincinnati is one of the well known gold pen manufacturers of the country. P. D. Collins of New York have a very fair reputation. I think that is about all that I would care to classify, except the A. A. Waterman & Company. 4538

XQ209. A. A. Waterman & Co. make gold pens for sale on the market generally? A. We would manufacture for anybody, yes.

XQ210. Have you sold gold pens to any extent separate from the completed fountain pen? A. We have sold some.

XQ211. A very small part of the business is it not? A. As compared to our own make, yes.

XQ212. The method of manufacture which you have described in so much detail is the general method of the manufacture of gold pens that is in use generally? A. There is quite considerable difference in our method over what I have seen or heard of in other people's makes. 4539

XQ213. What is the distinguishing difference between your method and those pursued by other gold pen manufacturers? A. The matter of our system of polishing; of our making of the slit; of our tempering of the gold; and of our system of grinding and smoothing.

XQ214. Outside of these particulars that you have mentioned the general methods are the same in all factories, that you know of? A. Yes.

4540 *DeWitt C. Van Valer*

XQ215. And outside of the particulars that you have mentioned the same machinery is in general use in all well equipped gold pen factories? A. Yes.

XQ216. Do you know how the L. E. Waterman Company tempers its gold pens? A. I have never seen the work in operation.

XQ217. You do not know how Fairchilds or Mabie, Todd & Bard do it? A. Mabie, Todd & Bard, although I have never seen them do the work, still I am quite positive that they use a trip hammer.

XQ218. You do not know how they temper it in the Fairchilds factory, to your personal knowledge? A. I have never
4541 seen them. I have never entered the factory.

XQ219. You have never seen them temper pens in the Mabie Todd & Company's factory? A. No, but in all cases I am willing to state on my knowledge and belief that they do it by a process of hammering, either a trip hammer or by hand.

Mr. Watson: I move to strike out the answer as incompetent.

XQ220. Will you tell us with a little more particularity how your tempering process of the gold pens is done? A. We take the pen in blank form and place it between jaws which are constructed for the purpose and, with the aid of a hydraulic press subject it to a pressure which shows upon the gauge to
4542 range from 15 to 25 tons.

XQ221. Do those jaws come absolutely together, or are they set to a gauge to come within a certain distance of each other? A. They came absolutely together.

XQ222. And that process is accomplished by one movement of the jaws? A. No.

XQ223. Is the pen blank subjected to several different pressures of the jaws? A. Not several different pressures but to a series of impulses.

XQ224. A series of pressures of the jaws? A. The same pressure; a series of the same pressure.

XQ225. Are the jaws released between the impulses? A. Yes, what you may call momentarily.

XQ226. Momentarily released? A. Yes.

XQ227. And then the pressure is again applied? A. It is controlled by the stroke of the pump.

XQ228. How long is that series of impulses kept up on the pen-blanks? A. Until the finger of the pressure gauge registers to what the press has been set for, which in turn is controlled by a safety valve.

XQ229. Does that constitute five impulses or fifty impulses or five hundred impulses or how many generally speaking? A. I have never made any note of that.

XQ230. How long does that continue on a single pen-blank? A. Until the pressure has been applied which the press has been set for. 4544

XQ231. Does it take one minute or five minutes or how long? A. Perhaps two or three seconds.

XQ232. And how rapidly do the impulses occur? A. I should judge about two in each second.

XQ233. So that generally speaking there are four to six impulses applied to each blank? A. It figures out that way, under this pressure.

XQ234. In making the slit in the gold pen do you use a knife cutter or a saw cutter? A. We do not use either one.

XQ235. Describe the nature of the cutter that you use to cut the slit in the gold pen? A. A round copper disc four and one-half one-thousandths of an inch thick, about four inches in diameter, perfectly smooth on the edge, no teeth in it. 4545

XQ236. A sharp cutter is it not? A. It necessarily would have to be sharp being so thin.

XQ237. A sharp knife blade cutter? A. Not in the form of a knife blade. It is a perfect disc.

XQ238. A sharp circular cutter? A. Yes, a sharp circular cutter. The starting of the slit from the pierce hole is done by a small shear tool.

XQ239. And this circular cutter immediately follows the shear tool to complete the slit? A. It starts from the iridium and is cut down to and meets the sheared slit.

4546

XQ240. Then as far as the pen points are concerned the portion of the pen points that are slitted first are at the iridium point? A. The slit is started from the pierce.

XQ241. What proportion of the slit is made by the shear and the tool? A. From one-eighth of an inch to three-sixteenths.

XQ242. That would be substantially one-third of the distance between the pierce hole and the point of the pen? A. It depends entirely on the size of the pen.

XQ243. In what proportion, in the pens that you describe as medium points No. 2, would the shear tool cut the slit? A. A scant one-third.

4547 XQ244. And the balance of the slit of the pen is made by the circular disc you have described, beginning with the iridium point and running up to the place the shear tool starts; is that correct? A. Yes.

XQ245. You have no personal knowledge of how the slits are made in the Mabie Todd factory? A. Never having entered their factory I only know from hearsay and belief.

XQ246. You have no personal knowledge of how L. E. Waterman Company makes its slits in its pens? A. The same answer.

XQ247. And the same answer as to how the pens are slitted in the Fairchilds factory? A. Yes.

4548 XQ248. The alloying of the gold and the preparation of the blanks is in your factory done substantially in the same way that all gold pen makers prepare their blanks? A. So far as I have any knowledge. The proportions of alloy used are peculiar to each manufacturer.

XQ249. Have you ever been in H. P. & E. Day's factory at Seymour, Connecticut? A. No.

XQ250. What other factories have you been in where they manufacture rubber pen holders except those where you are now employed? A. This man Davidson that I spoke about, that I entered the employ of.

XQ251. That was the first one, was it? A. Yes. I have been in touch with rubber turning to some extent as long as I have

4549

been engaged in manufacturing gold pens, in some one form or another, either repair work or preparing holders for mounting.

XQ252. What factories have you been employed in where rubber holders for fountain pens were turned? A. Davidson, Frazer & Geyer, A. A. Waterman.

XQ253. Did Hicks make rubber holders while you were employed by them? A. They did not. They prepared them for mounting, receiving the completed holder and doing such work on them as was found necessary for the purpose.

XQ254. Did Edward Todd or Foley turn rubber holders? A. John Foley, Sr., did. He made the complete holders.

XQ255. Did Edward Todd? A. They did not.

XQ256. Have you visited any of the factories where rubber pen holders were turned, since you were first employed by William G. Frazer & Co.? A. Not to see the work done, other than Heath's. 4550

XQ257. When were you in Mr. Heath's factory? A. Within the past year.

XQ258. Mr. Heath is a comparatively new man in the manufacture of rubber holders, is he not? A. I think he has been turning holders to my knowledge for the last four years, and may have been turning them before that.

XQ259. You never heard of him doing that prior to four years ago? A. I don't recall.

XQ260. Do you know, have you personal knowledge, whether or not the largest concerns that manufacture rubber holders for fountain pens manufacture the parts so that they will fit each other, that is, they make them in conjunction and not as interchangeable parts, or not? A. That is their intention. 4551

XQ261. Their intention is not to make them necessarily interchangeable, but to make the parts fit each other? A. Yes.

XQ262. Do you know that the L. E. Waterman Company makes all its rubber holders for fountain pens in parts to fit each other, at the factory? A. I have never been into their factory.

XQ263. You have no personal knowledge of whether they do or not? A. I have no personal knowledge as to what they do.

4552

XQ264. The assembling of the parts, meaning by that the adjustment of the gold pens, the feed and the point and section, is an operation requiring considerable skill and experience, is it not? A. It requires to be learned.

XQ265. The adjustment of the feed to the gold pen is a part of the manufacture that has to be carefully looked after, is it not? A. It requires care.

XQ266. And the manner in which this is done is a large element in making a satisfactory writing pen, is it not? A. It enters largely into it.

XQ267. The adjustment of the nibs on the gold pen and smoothing of the point, are important elements to make up a

4553 satisfactory writing pen, is it not? A. Yes.

XQ268. All that work is done by what we term skilled labor, is it not? A. It does not require skilled labor, but we employ skilled labor for the purpose.

XQ269. Do you know whether other manufacturers employ skilled labor for this work or not? A. Not as I understand the term skilled labor as applied to each rubber turner or gold pen maker.

XQ270. Who does this work, what you term unskilled labor? A. What manufacturers?

XQ271. Yes? A. Having never worked for, or been in the factory of any other excepting those I have mentioned, I cannot state.

4554 XQ272. You do not know as a matter of fact, of your personal knowledge, whether they use skilled labor or not, the other manufacturers? A. Only from hearsay and belief.

XQ273. Do you know what the alloy is in the gold pens manufactured by the L. E. Waterman Company and put in their fountain pens? A. I do not.

XQ274. Do you know of any other concerns that manufacture the so-called middle joint pens, except A. A. Waterman & Co.? A. Not of my own knowledge.

XQ275. Have you ever seen any of them on the market? A. I believe I have seen a middle joint that was other than our make.

XQ276. The middle joint parts shown on one of the cards, marked Exhibit A-68, is marked "Patented December 12, 1899." Do you know what the invention claimed to be covered by that patent is (showing witness the exhibit)? A. No.

XQ277. Do you know whether that refers to the feed or to some other part of the pen? A. I don't know what it refers to.

XQ278. I call your attention to the card, Exhibit A-68?

Mr. Bacon: I wish to note on the record that it has been exactly forty seconds since the last question was asked and the time consumed between questions is very nearly that on an average.

Mr. Watson: Counsel for plaintiff states that that is 4556
not a fact; he was examining a large number of exhibits which were first produced this morning in the middle of the examination of this expert witness.

XQ279. I call your attention to another of the cards, marked Exhibit A-68, the so-called self-filling pen, which is marked "Patented November 17th, 1903, and October 11, 1904," and ask you if you know what inventions are covered as claimed by those patents? A. The patent under date of October 11, 1904, covered the hydraulic tempering of the gold pen. The other I do not know.

XQ280. I find the patent marked October 11, 1904, on the exhibit, the end joint holder, on one of the cards, Exhibit A-68. Do you know what that patent claims to cover? A. That covers 4557
the gold pen.

XQ281. Then you were mistaken in your answer to the previous question, were you not? A. What was the previous question?

XQ282. I asked you what the patents marked November 17, 1903, and October 11, 1904, referred to? A. I told you the one of October 11th, 1904, related to the hydraulic tempering of the gold pen. The other one I do not know.

XQ283. You have produced a lot of sample cards here which have been marked in evidence as Exhibit A-68. Have you produced here any of the samples of so-called blown rubber? A. No.

XQ284. These are all what kind of rubber? A. American hard rubber, wrapped stock.

XQ285. Have you ever seen any fountain pens of other manufacturers than A. A. Waterman & Co., made similar to the so-called self-filling pen, parts of which you have produced and shown on one of the cards, Exhibit A-68? A. I have never seen any other manufacturer make that holder.

XQ286. How long has it been since you have been making feeds similar to the feeds which are in Exhibit A-68? A. There are two styles of feed shown here. Both have been made for the last ten years.

XQ287. What distinction do you make between these feeds?
4559 A. One we call a reed feed and the other is a fissure duct.

XQ288. Are you familiar with the fissure feeds that were formerly put into the fountain pens by the L. E. Waterman Company? A. In a general way.

XQ289. Is this fissure duct feed that you refer to very similar to that? A. It is not.

XQ290. What is the difference? A. They use two or more fissures, whereas we use one and the shape of the duct is entirely different.

XQ291. What is the difference in the shape of the duct? A. In the L. E. Waterman & Co. feeds, those that I have seen, the duct is perfectly square with an open top and contains a certain number of fissures at the bottom; whereas our feed is
4560 made up of two square sides and a V-shaped fissure in the bottom.

XQ292. These ducts run longitudinally along the side of the feed piece which is next to the writing pen in both cases? A. Yes.

XQ293. And the fissures in both cases are longitudinal fissures, extending the length of the duct? A. Yes.

XQ294. And the V-shaped duct of the A. A. Waterman feed has in its bottom a single longitudinal fissure? A. Yes.

By Mr. Bacon:

Q295. Are you describing the reed feed now or the other? A. The Federal, not the reed.

4561

By Mr. Watson:

XQ296. The reed feed consists of a longitudinal duct or groove along one side the feed bar which is next to the writing pen, does it not? A. It contains a V-shaped duct.

XQ297. The reed feed also contains a V-shaped duct? A. Yes.

XQ298. And this feed has a reed or finger which lies in this duct? A. Yes.

XQ299. Is there any advantage or utility in having the feed bar or feed pieces broad and flat as they appear under the pen in the finished fountain pens, as they are shown in the Exhibit A-68? A. They must conform to the size of the pen they are made for, in that respect.

4562

XQ300. Is there any advantage in having the exposed part of the feed bar, after the pen has been assembled, in the completed pen, broad and flat, as shown in the feed pieces on Exhibit A-68? A. There is no material advantage other than they must be in proper proportion mechanically and scientifically.

XQ301. Referring to the flat appearance of the feed, as shown in the finished pen which I now show you; is there any advantage in having that broad and flat? A. There is no advantage in having it flat. The width must be determined by the size of the pen used.

XQ302. Must the feed bar or feed piece be as broad as the gold pen to which it is the feeding mechanism? A. I would like to have that repeated.

4563

XQ303. (Question repeated.) A. No, it must not be as broad.

XQ304. In the pen I have shown you the feed piece appears to be broad enough to fill the concave side of the writing pen; is that necessary? A. It is the proper width for this pen.

XQ305. Does it serve as a function of utility to have the feed bar broad enough to fill the concave side of the writing pen?

Mr. Bacon: I wish to register an objection to the last question but one, because an examination of the pen shows

that the feed bar is not as broad as the pen; not much over one-half as broad; there is a wide space on each side.

A. It does not serve any particular purpose that I know of.

XQ306. Why do you make it that way then? A. Because it is a better proportion and is more satisfactory.

XQ307. Then it does serve as a function of utility, does it not? A. Not as I understand the meaning of the word utility.

XQ308. Do you know that the L. E. Waterman Company own an existing patent which covers that feature of a fountain pen? A. I do not.

4565 XQ309. How long have you made feed bars of the general appearance and shape that appears in the pen I now show you (showing witness a pen)? A. I think this style of feed, that general shape, has been used by us for the last eight or nine years.

XQ310. You are prepared to say that you have used that shape for the last eight or nine years? A. That along with others. There has been a variety of feeds. Just when this particular shape was adopted I have no recollection.

XQ311. Do you know that L. E. Waterman Company formerly made a feed bar for their fountain pen very much narrower at and near the point than appears in the pen which I now show you, which is Exhibit No. 1? A. I don't think that the point

4566 of any feed made by A. A. Waterman & Co. was reduced any material amount over what that is on the extreme end, as they must all conform to the width of the nib of the gold pen, which that exhibit does.

XQ312. You evidently did not understand my question. I will ask the examiner to read it again to you.

XQ313. (Last question repeated.) A. What name heads that question?

XQ314. L. E. Waterman Company? A. You asked me if L. E. Waterman Company made a pen with a narrow feed?

XQ315. I am asking you if you know that they made feeds which were narrower, very much narrower, than the one ap-

pearing in Plaintiff's Exhibit 1? A. No, I don't know that L. E. did.

Mr. Bacon: Defendant's counsel gives plaintiff's counsel notice that unless this line of examination is closed speedily he will direct the witness not to answer and will take the matter to the Court and ask the attorney to be reprimanded for simply killing time with useless questions that have nothing to do with this case and using up defendant's two weeks needlessly while he had over six months to present his case.

XQ316. I show you Plaintiff's Exhibit No. 33 and ask you if the knob or screw end and at the head end of the holder does not 4568
turn in the opposite direction from what the screw threads usually turn? A. In view of the fact that it does not work, I cannot answer. I don't know how it turns. It is not our make of holder.

XQ317. Whose make of holder is it? A. It is a very old date, a very old make of holder, not the present make.

XQ318. It is one of the pens made by A. A. Waterman & Co., is it not? A. It is so stamped. The thread on the back end is known as a left-handed screw.

XQ319. Which is the opposite kind of a screw to that used in screw threads? A. Yes.

XQ320. The feed bar in Plaintiff's Exhibit No. 33 is of a very much narrower character than those appearing on Exhibit 4569
A-68, is it not? A. Yes.

XQ321. The pen which I have called your attention to and to which I have referred, I will now pass to you and ask if that is a fountain pen of the defendant's manufacture (handing witness the pen)? A. Yes.

The pen identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 141.

XQ322. The Davidson that you referred to in your testimony was a very small manufacturer of fountain pens in Brooklyn? A. He did a fair trade.

4570 *DeWitt C. Van Valer*

XQ323. How long since you made a feed bar like that appearing in Plaintiff's Exhibit 33? A. It is some years, but I cannot give the exact time. I cannot fix the time when the form was changed exactly, although we still have occasion to make for the purpose of repair work, and should it be desired, feeds of that description.

XQ324. Is there any invention of utility or benefit between the feed bar contained in Plaintiff's Exhibit 33 and that contained in Plaintiff's Exhibit 141? A. I should not say so because the formation of the back is more a matter of beauty.

XQ325. Then you want to change your testimony to the effect that it is not necessary for the feed bar to fill the con-
4571 cave side of the gold pen? A. It must be a proper width for that purpose. It cannot, necessarily, fit the whole pen.

XQ326. It does not necessarily have to fit the whole pen? A. No.

XQ327. Is it not a fact that as far as making an actual writing instrument, all that is necessary, so far as the feeding is concerned, is to have the space for the grooves and ducts sufficiently wide to cover the slit and pierce hole? A. It would be necessary to regulate that width to give the result wished for. The width which you enumerate would not be sufficient.

XQ328. In your opinion then the width of the feed as shown in Plaintiff's Exhibit 141 is an unnecessary width? A. No, it is not an unnecessary width. It is proper for that size pen.

4572 XQ329. Is not the size of the pen in Plaintiff's Exhibit 141 and the size of the pen in Plaintiff's Exhibit 33 substantially the same? A. Yes.

XQ330. One has a narrow feed bar and the other has a broad flat feed bar? A. The actual width by caliper or micrometer would vary but very little. It is only a matter of shape.

XQ331. Do you think that the pen, Exhibit 141, is made to appear more similar to plaintiff's pens shown in Plaintiff's Exhiibt No. 1, by having a broad feed? A. There is no attempt to copy the style.

XQ332. (The question is repeated)? A. It necessarily looks like it, but is very dissimilar.

XQ333. Do you know that the L. E. Waterman Company have extensively advertised the last several years the broad character of the feed, its appearance, and called it the spoon feed? A. Yes, I know that fact.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ334. Have you ever imitated their feed in any way or have you kept just as far away from them as you knew how? A. As far as it was possible to do so.

RDQ335. And you have made yours under the terms of your own patent? A. Yes.

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RDQ336. You mean you have kept away from them as far as possible, or that you have imitated them as far as possible? A. Kept away from them as far as possible.

RDQ337. Do you employ men that have been employed in other factories? A. Yes.

RDQ338. Did you employ anybody that has been employed in the L. E. Waterman factory?

Same objections.

A. Yes.

RDQ339. And you know from them what is going on in the other factories?

Mr. Watson: Objected to as incompetent.

4575

A. Yes.

RDQ340. Do you know from them what kind of men are employed, whether they are union men or non-union men, or high grade or low grade?

Mr. Watson: Objected to as incompetent, irrelevant and immaterial.

A. Yes, I know that.

RDQ341. Is your shop what is called a union shop?

Mr. Watson: Objected to as immaterial.

A. It is.

4576

RDQ342. Is the L. E. Waterman shop what is called a union shop?

Mr. Watson: The same objections.

A. It is not.

RDQ343. They use inefficient and scab labor?

Mr. Watson: Objected to as incompetent and immaterial.

A. Yes, although I don't like the word scab.

RDQ344. I show you this circular, Exhibit A-63, and call your attention to the quotation at the bottom of it, "If it isn't
4577 an A. A. it isn't a Modern," and ask you for how many years circulars of that character, with that legend, have been used by the Modern Pen Company?

Mr. Watson: Objected to as immaterial.

A. This circular, to the best of my knowledge, has been in common use by us for the last eight or ten years.

Mr. Watson: I move to strike out the answer as immaterial and incompetent and irrelevant.

RDQ345. You spoke in relation to the machine for the hydraulic pressure of the pens to make them strictly homogeneous, as exerting a pressure from 15 to 25 tons. Did you mean that
4578 that was an irregular pressure or that there would be fifteen tons on one style of pen and twenty-five tons on another style of pen? A. Fifteen on one style and twenty-five, more or less, on another.

RDQ346. That each pen of its particular grade is subjected to exactly the same amount of pressure and same number of impulses?

Mr. Watson: Objected to as highly leading and incompetent and immaterial.

A. Yes.

4579

RDQ347. Is it possible for any factory using trip hammers or other kind of hammers, to get as homogeneous a pen as you do by this patented machine?

Mr. Watson: Objected to as it is shown by this witness that he has had no experience in this kind of work for many years, if ever.

A. It is not possible for them to do so.

RDQ348. How long has this pen been patented and used by you?

Mr. Watson: Objected to as immaterial.

4580

A. Since 1904.

RDQ349. And before that did you use trip hammers? A. No, had hand hammers.

RDQ350. In the large number of L. E. Waterman pens that come in to you for repairs, do you find that the holders are always uniform in color? A. They are not.

RDQ351. In what way are they discolored? A. They show a green color and I have seen them with a yellow color; generally discolored.

RDQ352. That shows unhomogeneous rubber?

Mr. Watson: Objected to as highly leading and improper.

4581

RDQ353. Does it show defective rubber? A. It would show that the rubber was not properly cured, I should judge, in my opinion.

Mr. Watson: I move to strike out the answer as this witness is not qualified as a rubber expert.

RDQ354. Do you O. K. all the bills for rubber that come in from the American Hard Rubber Company?

Mr. Watson: Objected to as immaterial.

A. I do.

RDQ355. Then do you know what is ordered and what you get?

Mr. Watson: Objected to as the witness has already testified to this on cross-examination.

A. I do.

RDQ356. In your opinion is the rubber that goes into the L. E. pens of as good quality as that which goes into the A. A. pens?

Mr. Watson: Objected to as the witness has shown that he is not a rubber expert.

A. The evidence which comes to me, through the repairs received of the L. E., lead me to believe that the grade of rubber
4583 which we use is equal to if not superior.

RDQ357. Mr. Lancaster, being examined, states that our pens did not have as smooth a point as the Fairchild pen; and we have two of those pens that are produced and I ask you to explain the difference in the points (showing witness pens)?

Mr. Watson: Objected to as immaterial.

(The witness examines the pens through a small microscope produced by the examiner.)

A. The pen stamped "A. A. Waterman & Co., New York, No. 7," is, in my opinion, a smoother writing pen than the one stamped "The Lancaster No. 7."

RDQ358. Are they different grades of point? Is one designated a needle?

4584

Mr. Watson: Objected to as leading and immaterial.

A. The A. A. Waterman point is much finer; it conforms more to the accepted idea of a needle point than the Lancaster.

RDQ359. The reed feeds are put on expensive pens only? A. Yes.

RDQ360. Never put on cheap pens? A. No, what we call No. 1.

RDQ361. Very cheap goods? A. Very cheap goods.

4585

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ362. What do you mean by cheap goods? A. I mean pens that retail for $1.

RXQ363. Do you put the reed feed in any of the pens you make which have the end joint? A. We have at times used them.

RXQ364. Those pens retail at what prices? A. They retail I think from $1 to $3.50 or $4.

RXQ365. And you do at times use the reed feed in that class of pen? A. In the larger sizes of them we do.

RXQ366. Did you make the pens Exhibit No. 140; were they made in your shop, the A. A. Waterman & Co.? A. You are speaking of the gold pens?

4586

RXQ367. Yes? A. No, sir.

RXQ368. Did you ever stamp any holders like the one I now show you, Plaintiff's Exhibit 141? A. I don't recognize that holder.

RXQ369. Did you ever stamp any pens as that pen is stamped on the barrel? A. I have a recollection, that they either were stamped or there was some question asked me as to whether I could stamp them; but it was a matter of a very small quantity.

RXQ370. You did make a few of them, didn't you? A. I think we did make something less than one hundred, or a small quantity.

4587

RXQ371. And sold them to Mr. Lancaster? A. I believe they went to him, as far as I know.

The pen identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 140.

RXQ372. The holders of the L. E. Waterman Company that come to your attention are holders that have been in use and come in for repairs, are they not? A. In some cases, and in other cases they are sent to us by dealers.

RXQ373. How does it happen that dealers send them to you? A. That I cannot answer.

4588 *DeWitt C. Van Valer*

RXQ374. Do you know from what dealers you have received them? A. I do not.

RXQ375. When did you receive any from dealers? A. They come in frequently. I cannot state.

RXQ376. In what quantity? A. I cannot say as to what quantity, as they are placed with quantities of our own and any manufacturer's goods that are sent to us for the purpose of repair and exchange or credit; that is, anything in that line that enters into the business.

RXQ377. The discolored holders that you referred to in your direct-examination were pens that had been in use already? A. Not necessarily in use; sometimes simply lying in stock.

4589 RXQ378. Do A. A. Waterman & Co. exchange their stocks of pens with dealers and take up in exchange L. E. Waterman pens? A. I cannot answer that question.

RXQ379. Have you ever known any case of that kind? A. No, because my duties do not bring me in touch with that department.

RXQ380. On your re-direct examination you said that you made the feeds like those shown in Plaintiff's Exhibit No. 141, in accordance with the patent. Does the patent you referred to have anything in it which claims a broad feed which fills the concave side of the pen, as appears in Plaintiff's Exhibit 141? A. I cannot give any answer to questions covering the matter of the patents. That does not come within the scope of my

4590 duties.

RXQ381. You don't know anything about it? A. I don't know anything about that end of the business.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ382. Plaintiff's Exhibit 140 was not made by A. A. Waterman & Co.? A. No.

RDQ383. You are not willing to say they ever made a pen that was stamped "Idea"?

Mr. Watson: Objected to; the witness has carefully examined the pen and said they had made about a hundred.

Mr. Bacon: No, he did not say anything of the kind.

RDQ384. I show you the word Idea (indicating)? A. When I made that answer I did not see any such word on this. I was looking at the name Lancaster.

RDQ385. Did you ever manufacture a pen stamped Idea inside of a star? A. No.

Mr. Watson: The Court's attention is directed to the answer of this witness regarding this exhibit, and his previous examinations, and the Court is asked to compare with his present answer his answers to questions 368-371.

4592

Deposition closed.

Signature waived.

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DEWITT C. VAN VALER, recalled on behalf of the defendant.

*Direct-examination by Mr. Bacon:*

Q386. I show you Exhibits No. 1 and No. 10. What does No. 10 retail for? A. That is a $1 pen.

Q387. Manufactured by A. A. Waterman & Co.? A. Yes.

Q388. I show you Exhibit No. 1, manufactured by L. E. 4593
Waterman Company and ask you what that retails for? A. That is their $2.50 pen.

Q389. Are they substantially the same in quality and size? A. Yes, the weight is about the same in them. One is rounded up a little closer that the other.

Q390. Have you handled a great many of those $2.50 L. E. Waterman pens in the last eight or ten years? A. I have; I have seen large quantities of them.

Q391. Would it amount to thousands in that time? A. I think I can safely say that there would be at least 5,000 in the last eight years that have passed under my scrutiny.

4594 *DeWitt C. Van Valer*

Q392. Do you know of your own knowledge from an examination of these $2.50 L. E. Waterman pens what points they have? A. The quality of the iridium?

Q393. Yes, the iridium? A. Yes, I can tell without any hesitation that during that period sixty per cent of those which I have seen have had what is known as manufactured iridium; that is, of the $2.50 up—from the $2.50 grade up.

Q394. Does A. A. Waterman & Co. manufacture any pen to retail above $1 that has ever contained manufactured iridium? A. They do.

Q395. What? A. They manufacture a $1 pen which has the
4595 manufactured iridium on it.

Q396. Any other? My question was above $1. A. No, they do not. I did not understand your question.

Q397. I show you a pen holder with a mark and a stamp, made for Mr. Lancaster and ask you if you ever stamped any pens with any other stamp than that one? A. No, we have never stamped any pens for Mr. Lancaster with any other stamp, excepting this.

Q398. That stamp is a circular piece of metal, is it? A. Yes.

Q399. Did you ever have any other stamp with his name on it in your possession? A. No, I do not recall ever handling any of Lancaster's stamps. I have no recollection of ever doing so.

Q400. Other than the one that you have? A. Other than this
4596 one here.

*CROSS-EXAMINATION by Mr. Watson:*

XQ401. How did you happen to handle 5,000 Ideal fountain pens in the last eight years? A. By having been returned to the firm that I worked for, for various reasons, and taken up in general trade. I don't know how they got them, but they pass into what we call our repair department and some of them are dismantled and thrown away and the gold pen melted up, what we call stock repairs.

XQ402. And some you sell again? A. Those that I destroy are not sold again.

4597

XQ403. Would you repolish or clean up some of these pens and put them on the market again? A. No; dealers may send them where they want. As a usual thing, L. E. Waterman pens or any other outside make of pens which come in to us, we cut the point off and put it into a melting pot.

XQ404. You are talking about the gold pens now? A. I am.

XQ405. When you compared Exhibits No. 1 and No. 10 you had reference entirely to the gold pen? A. No, I had reference then to the whole complete article.

XQ406. Why did you say one was rounded and one was something else? A. The Colonel asked me a question in regard to the gold pen while I held it in my hand.

4598

XQ407. You said that when you were asked to compare the size of the pen and quality of the pen? A. No, the size of the pen.

XQ408. Have you ever taken the respective weights of those two pens? A. Yes.

XQ409. Which is the heavier pen, Plaintiff's Exhibit 1 or No. 10? A. I never weighed those two. I have weighed others just like them, made from the same dies.

XQ410. What is the price that you pay for native iridium? A. They vary.

XQ411. What are you paying for the last you bought? A. I O. K.'d the bill, but I don't know what it was per ounce. I will have to figure it out from the bill.

4599

XQ412. Do you know the price per grain? A. It is not bought that way.

XQ413. How is it bought? A. Bought by the ounce.

XQ414. Well, per ounce? A. The usual figure for native iridium at the present time will range from $75 to $125 an ounce. The present market for iridium, you may buy some for $75 and you may have to pay as high as $125.

XQ415. Did you not testify on your examination the other day that you had a stamp in your place like the stamp which appears on Plaintiff's Exhibit 140? A. No, sir, I did not.

XQ416. Are you willing to swear now that you did not say that in your examination? A. I did not say that. You took an adjournment before I had finished my answer to that question. If you will refer back to it I will be glad to finish it now.

Mr. Watson: The Court's attention is called to the witness' answer to questions No. 368-371.

XQ417. Do you buy the $125 grade of iridium at the present time? A. If we needed it we would.

XQ418. Is that the grade that you use now? A. There is no question of grade about it. It does not run by grade.

4601 XQ419. Do you mean to say that the same grade sells by one dealer at $75 and by another dealer at $125 an ounce? A. Yes, I will say that, because very few dealers know the quality. It takes a pen maker to know that.

XQ420. You can buy the same grade at one dealer's for $75 and at the same time another dealer is asking $125 for the same grade? A. Yes.

XQ421. That is the case today? A. You will find that is so, I presume.

XQ422. How do you test to tell whether the point on the pen is soft or hard iridium? A. The color denotes it. The degree of density. The positive sure way is by the way in which it feels when you are grinding it. It requires a mechanic

4602 to work it as well as to look at it to determine.

XQ423. You would not say as an expert that a man by looking at a point of a gold pen could determine whether it was hard or soft iridium would you? A. I would say that he can.

XQ424. Why is it necessary to test it by grinding? A. That is not necessary. I did not say that. I said it was a good way to determine that, the best way to determine it by the use of both. by working it and looking at it.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ425. When you buy a quantity of iridium you turn it over to your expert Mr. Newman? A. After I have examined it, yes.

4603

RDQ426. And he picks out the first quality does he and rejects the rest? A. He does.

RDQ427. Within what limits will he reject parts of the purchased iridium? A. Three-fourths of the iridium that we purchase we do not use for points; that is, native iridium.

RDQ428. That is, you take the very choicest? A. Yes.

RDQ429. And leave out the rest? A. Yes.

RDQ430. What do you do with that that you reject? A. We sell it.

RDQ431. So it does not make any particular difference what grade you buy; you pick out the best and the difference will be in whether ten per cent is rejected or seventy-five per cent is rejected; is that it? A. Yes, if I understand the question.

4604

RDQ432. That is, you buy on lot of iridium and Mr. Newman will reject ten or fifteen per cent and in another lot he would reject seventy-five per cent? A. Yes.

Mr. Watson: I move to strike out the testimony of this witness as immaterial to any issue in this case.

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JOHN W. KAISER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

*Direct-examination by Mr. Bacon:*

4605

Q1. Please state your name, residence and occupation? A. John W. Kaiser; residence, 372 Elm Avenue, Brooklyn. Business, repair clerk, fountain pens.

Q2. How long have you been employed by A. A. Waterman & Co.? A. Eight years.

Q3. How long have you been repairing pens? A. Eight years.

Q4. Your whole experience in the pen business has been with them? A. No, that was just on the repair line, steady, continual repair.

Q5. What was your business before that? A. Rubber turning.

4606 *John W. Kaiser*

Q6. How long have you been a rubber turner? A. Close to fourteen years.

Q7. Do all the pens that come into A. A. Waterman & Co. for repairs pass through your hands? A. Yes, all of them do.

Q8. You are the head repair man? A. Yes.

Q9. About how many pens come in a week on an average, of all kinds? A. About four hundred on an average now the way we are running.

Q10. Is that a low or a high average? A. That is a pretty high average.

4607 Q11. About how many of those represent A. A. Waterman pens? A. I should say about sixty per cent of those would be A. A. Waterman pens.

Q12. And the forty per cent would be various makes? A. Yes.

Q13. About what proportion of them would be L. E. Waterman pens? A. About fifteen per cent of those would be L. E. Waterman pens, the remainder would be various other makes.

Q14. What is generally the matter with L. E. Waterman pens when they come in for repair? A. There are different things. They sweat, they leak and flow too free; the usual complaints that I get; outside of going through the pen shop and then coming back to me.

4608 Q15. Do substantially all the L. E. Waterman pens that come in for repair have the end joint? A. Yes.

Q16. Do you very often see a self-filler on any of their fancy makes? A. Very seldom they come there for repair—the self-filler.

Q17. The L. E. Waterman self-filler is wholly different in its construction from the A. A. self-filler? A. A whole lot of difference.

Q18. When they leak what is the cause of the leaking? A. I find as a rule that they do not seem to be worked up properly, when they leak; do not seem to me as though they were worked up by a workman who seems to understand.

4609

Q19. The screw becomes worn out? A. It is not faced off properly.

Q20. During your fourteen years of experience have you become familiar with different qualities of rubber? A. Quite so. I think in all that time I ought to be a little bit.

Q21. Do you know the difference between good and bad rubber in the pen manufacture? A. I think I do. When I put a tool up against it I can tell in a hurry.

Q22. In your opinion is the rubber employed by A. A. Waterman & Co. good rubber? A. To my knowledge it is pretty fair, what I have handled of it.

Q23. Have you ever known any better? A. Not any better, no. 4610

Q24. How does it compare with the L. E. Waterman rubber? A. In my estimation I think it is pretty good, just as good as theirs, every bit of it, the way I find it.

Q25. Is there any better grade of rubber in the market than that used by the A. A. Waterman people?

Mr. Watson: Objected to as it is not shown that the witness is competent to answer the question.

A. No, not that I know of.

Q26. Did you ever see or ever hear of a higher grade for pen purposes than that used by the A. A. Waterman people? A. No, sir.

Q27. Do you ever have any trouble with the A. A. Waterman pens that come in for repair in that the rubber is discolored? A. Some of them come in—unless a dealer has them lying very long in stock, and they come back; they may have been exposed to a lot of strong light. 4611

Q28. When they are discolored what color do they show? Light green, dark green, brownish.

Q29. Yellowish? A. Yellowish, brownish.

4612

*CROSS-EXAMINATION by Mr. Watson:*

XQ30. How long have you been in the pen business altogether? A. About fourteen years.

XQ31. And the eight years you have been a repair clerk was included in the fourteen years you speak about? A. Yes.

XQ32. Have you ever had anything to do with the manufacture or rubber? A. No, sir.

XQ33. You don't know anything about the ingredients of rubber or how it is made or anything about that part of it? A. No.

4613 XQ34. Have you ever been in H. P. & E. Day's factory at Seymour, Connecticut? A. No.

XQ35. Have you ever been in the L. E. Waterman Company's factory? A. No, sir.

XQ36. The A. A. Waterman pens that have been lying in the sun become discolored and brownish don't they? A. They will occasionally, yes, if there is a very strong light.

XQ37. Does that show that it is bad rubber? A. No, it does not. The strong light will have an effect on all kinds of rubber in fact.

XQ38. Have you ever manufactured rubber penholders for fountain pens from rubber that came from H. P. & E. Day's factory? A. Not that I know unless when I worked for M. T. Horn. They were making the Remex holders there. I

4614 don't know where they got their stock.

XQ39. You consider that the rubber in the Waterman Ideal fountain pen is just as good as any rubber on the market? A. Yes, just as good, to my knowledge, that I have seen.

XQ40. Are you prepared to say that all the L. E. Waterman Company pens that come into your shop, all the self-fillers, leak, flow too freely? A. Not all of them, no. I did not say all them. I said what I get outside of going through the pen shop and have the pen itself repaired.

XQ41. A good many pens that come to you have met with some accident, broken? A. Yes, occasionally a section broken, caps.

XQ42. You say forty per cent of the pens you repair are various makes? A. Various makes.

XQ43. I understood you to say fifteen per cent of that forty were L. E. Waterman. That would be about six per cent of all the pens you get as I figure it, is that right? A. No, that would be about fifteen per cent the way I put it; about fifteen per cent of all we get. Forty per cent would be various makes and twenty-five per cent of that would be various makes outside of the L. E. Fifteen per cent would be L. E., of the total. 4615

XQ44. What per cent of all these are broken and have some accident or other happen to them, apparently—the L. E. Waterman pens? A. I don't think it would be any more than ten per cent of that total, if there would be that many, broken pens. 4616

XQ45. How many of these pens have had some accident happen to their gold pen? A. I could not very well answer you that because I don't have much to do with gold pens. They are repaired and sent back to me. I don't take particular notice. I just set them up and let them go through.

XQ46. But those pens are included in the fifteen per cent you have referred to? A. Yes, they are included in the fifteen per cent but they are divided up between the gold pen department and the rubber department.

XQ47. The L. E. Waterman Company self-filling pen cannot leak at the joint any more than the A. A. Waterman pen can it? A. Which one do you mean? There are two that I know of. 4617

XQ48. Either one of them? A. They cannot leak?

XQ49. I ask you if they can leak at the joint? A. They can leak at the joint.

XQ50. The self-filling pen of the L. E. Waterman Company? A. The pump pen cannot leak at the joint because there is no joint there to leak.

XQ51. Well, can the other pen leak at the joint? A. Yes, if there is a defect in the reaming it naturally will leak. If you ream the hole too large there is chances of leaking, or if the sack happens to break away.

4618

XQ52. Is not that true of an A. A. Waterman self-filler? A. It is possible, but not in the same way.

XQ53. There is no more chance of the L. E. Waterman Company self-filling pen leaking at the joint than there is of the A. A. Waterman Company pen? A. No, not if properly adjusted.

XQ54. They are cemented together in substantially the same way? A. I don't know. I don't think theirs are cemented together. The self-filling pen is not cemented; those that I have seen are not cemented—from the L. E. Waterman.

XQ55. I show you an L. E. Waterman Company self-filling pen and ask you if you think that joint is cemented together
4619 (handing witness a pen)? A. No, sir.

XQ56. You don't think it is? A. No, sir. It is only forced in tight. There is not a bit of shellac on it. If my hands were not so sweaty may be I could take it off entirely.

XQ57. There is no chance for this pen to leak, the L. E. Waterman self-filler, unless the sack breaks? A. Unless the sack breaks away, or the feed happens to be loose inside.

XQ58. There is no more chance of that pen leaking, unless the sack breaks, than there is of an A. A. Waterman self-filler? A. No.

XQ59. What proportion of the A. A. Waterman pens that you repair are so-called end joint pens? A. I don't think there would be more than about twenty per cent of them now.

4620 XQ60. Most of your trouble is with the self-filling pens? A. That is in reference to the sacks worn out, or accident.

XQ61. About seventy-five per cent of the A. A. Waterman & Co. pens that you have sent in to you to repair, are self-filling pens; is that right? A. No, not the whole seventy-five per cent.

XQ62. What kind are they? A. We have middle joint, that come in occasionally.

XQ63. What is the matter with the pens when they come in? A. They may have met with some sort of accident; a man has broken the cap or broken the feed off.

4621

XQ64. This same thing happens to L. E. Waterman pens? A. We don't get many of those. They send them back to L. E. Waterman, from what I can see.

XQ65. What is the matter with A. A. Waterman & Co. pens that are sent back to you that have the end joint? A. It may be that some of those flow a little too free or it may be a man has tried to fix the pen himself and has taken it apart and could not put it together again. Then again, some that we get might leak at the joint.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

4622

RDQ66. Do you very often have a broken sack in the self-filler? A. Not unless it is a very old one.

RDQ67. And the self-filler cannot leak? A. Not that I can see, no.

RDQ68. If an L. E. Waterman self-filler should leak in the sack, and the joint was loose where it is not cemented it might leak on to his fingers? A. If it would leak in the sack?

RDQ69. Yes, if the sack should break and the uncemented end joint was loose would it leak upon the fingers? A. Naturally it would have to work down between the joint, if it broke in the barrel, and come out somewhere. The ink would have to come out somewhere.

RDQ70. Do you very often have trouble with the button on the A. A. Waterman self-filler breaking? A. No, not breaking off unless they break them off by force; if they use pliers to try to see how they are made. 4623

RDQ71. In the last two years that button has been made much larger and stronger? A. Yes, much stronger

RDQ72. Do you ever have any trouble with the sack separating from the plug? A. No.

RDQ73. The plug is connected with the head? A. Yes.

RDQ74. Have you ever assembled pens and adjusted them?

Mr. Watson: Objected to as not proper re-direct examination.

A. Yes.

RDQ75. If you get the barrel and section and feed from one party and the pen from another how long would it take you to assemble the parts and adjust the pen ready for the market?

Mr. Watson: Objected to as not proper re-direct examination and as absolutely immaterial and irrelevant.

RDQ76. How many could you do in a day? A. I don't know. That would be pretty hard for me to answer just now for I have not done that for quite a long while. I never timed myself on any of that sort of work.

RDQ77. When you were doing that sort of business couldn't you assemble and adjust four hundred or five hundred a day?

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Mr. Watson: The same objections.

A. I could not if I got the barrel and caps and feed and all that separate.

RDQ78. I find that I am mistaken about one point; in assembling they get the holder and feed and barrel and section complete, do they? A. I call it the setting up.

RDQ79. Then assuming that you get the holder complete and the assembling consists in merely putting in the pen and the feed and adjusting it properly, ready for the market, how long would it take then to assemble and adjust a pen? A. I don't think it would take more than a minute.

RDQ80. It requires no machinery? A. No, a little strength

4626 in the fingers.

RDQ81. Then the assembling of the parts and the adjustment is a matter of a short time? A. A very short time.

RDQ82. Does it require men of the highest skill? A. It certainly does; as I said, if you don't have the strength in the fingers and you don't understand which way to set it up, you are lost.

RDQ83. The men who do that do not get as high wages as the man who selects the iridium? A. No.

RDQ84. He is the highest paid man in the shop, is he not? A. That is what I understand. It is something that don't worry me very much.

RDQ85. You formerly worked for Horn & Co.? A. Yes.

RDQ86. And they made the Remex? A. Yes.

RDQ87. And that is sold by L. E. Waterman Company? A. Yes, and they made also the Pen and Ink. I was the first man to make a sample for it.

RDQ88. Then you have worked on the goods that the L. E. Waterman people sell, have you? A. Yes, only it was under this name of M. T. Horn. I don't know whether L. E. Waterman have an interest in the firm or not.

RDQ89. You are not prepared to say that they did not get their rubber from Day of Connecticut?

Mr. Watson: Objected to as immaterial and incompetent. 4628

A. No, I could not say that.

RDQ90. Was the rubber that went into those pens any better than that which goes into the A. A. Waterman pens? A. No.

RDQ91. Of all the L. E. Waterman Company pens that come in for repair did I understand you to say about one-tenth had broken? A. About that.

RDQ92. Generally speaking when parts are broken they send them around to the L. E. Waterman people? A. I think so. We don't seem to get those easy jobs; we only seem to get the hard jobs.

RDQ93. They are largely the leaky pens that you get hold of? A. It seems so to me. 4629

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ94. When did you work for Horn? A. Eight years ago.

RXQ95. How many Remex pens did you make? A. I was turning on the lathe for three years and in those three years I made up eleven hundred every week and fitted the section.

RXQ96. All Remex? A. The Remex and the Pen & Ink.

RXQ97. Did you set up pens there? A. No.

RXQ98. You did not assemble gold pens and the holders at all? A. No.

4630

RXQ99. Never did? A. We made up the holders and reamed out the feed and pushed the feed in and the L. E. Waterman people set it up themselves.

RXQ100. You furnished the gold pens yourself? A. No, they made the gold pens in this place.

RXQ101. None of those pens had the name Waterman's Ideal Fountain Pen on them? A. No.

RXQ102. None had the name Waterman on them? A. No, not on those holders.

RXQ103. Did you ever see an L. E. Waterman Company self-filling pen that had the sack broken and that leaked at the nozzle? A. I have never seen them unless it came through in

4631

the repair, that is, that the sack had broken inside the barrel.

RXQ104. You never saw one leaking at the nozzle did you? A. No, unless the sack was broken.

RXQ105. Did you ever see one with the sack broken that did leak at the nozzle joint, the L. E. Waterman self-filler? A. Unless it came through the repairs.

RXQ106. You don't remember ever seeing one? A. Not on the outside, no.

RXQ107. It leaked on the inside? A. It may have leaked in the barrel but it had to go through the nozzle if it did leak.

RXQ108. You never saw one that leaked through the joint? A. I have never seen any outside, no.

RXQ109. Is it not a fact with a great many of the self-

4632

filling pens of the A. A. Waterman Company; that people don't know how to operate them? A. No, I don't think so.

RXQ110. And they use pliers to try to open the screw end on the holder? A. I think they do it for curiosity's sake to try and see what is in the inside. The directions are plain enough. There is an arrow mark plain enough for any man to see.

RXQ111. You have seen a good many where they show signs that pliers had been used? A. Yes. I have seen several of them where they have been broken off by force.

RXQ112. When you set up, as you call it, a pen do you test the pen to see if it is in good working order, smooth etc.? A. I don't test them for the smoothness of the pen. I test them for the writing part and see that they don't leak.

4633

RXQ113. You do not adjust the nibs though at all when you set them up? A. You have to adjust them. You cannot set a pen so that the nibs will be lying one over the other.

RXQ114. You have to examine every one of them under glass? A. I do before they go out.

RXQ115. And when you are setting them up? A. Or setting them up, and they are polished, and they generally come back to me and I look at them with a glass to see that they are O. K. before they go back to the cutsomer.

RXQ116. In putting the gold pen into the holder with the feed you heat the feed and shape it to the pen? A. If it has to be.

4634

RXQ117. Don't you have an alcohol lamp or some other means of heating the rubber, at hand all the time? A. I have a small gas lamp that I use.

RXQ118. That is needed constantly, frequently? A. Yes, we need them every day, to get the feed to lie nice and flat for the pen.

RXQ119. It is quite an art to properly adjust the gold pen and feed and holder together, is it not? A. Yes, it certainly is. It is not everybody that can set up a pen.

RXQ120. If it is not adjusted and set up properly it will not write? A. No.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

4635

RDQ121. You spoke of two kinds of L. E. Waterman's self-filler; one is what they call the pump pen? A. Yes.

RDQ122. Is that a success or a failure? A. As far as I know it has been a failure. They have never seemed to push it in any way.

RDQ123. And the other one is a side bar that you push in? A. A sort of cap on the barrel that you have to work up and down.

RDQ124. And it rots the rubber? A. I don't know that it would rot the rubber but it is a very bad thing. If it happens

to break in the pocket and you put your hand on it you naturally press the sack and you get ink over yourself.

RDQ125. Nobody takes the L. E. Waterman self-filler pen seriously, do they?

Mr. Watson: Objected to as incompetent.

A. I don't know. I don't think they do.

RDQ126. What you have testified to in relation to setting up and adjusting pens relates to your repair work only? A. Yes, only to my repair work. I don't bother with the regular work at all.

4637 *RE-CROSS EXAMINATION by Mr. Watson:*

RXQ127. Have you ever set up new pens for the A. A. Waterman Company? A. No, not to any extent. I may have set up a few when there happened to be nobody around and I have set them up for them.

RXQ128. Did you set them up at Horn's? A. No, I never had to set any up for Horn.

RXQ129. The L. E. Waterman self-filler is very easily filled, is it not? A. There is nothing very hard about filling it.

RXQ130. It is a very simple operation, is it not? A. If people understand how to pull the cap down and put it back again in a proper way.

4638 RXQ131. And if the cap is adjusted in place there is no chance of ink getting in the pocket from pressing the rubber sack, is there? A. Not if the cap was on tight enough.

RXQ132. The cap fits tight, doesn't it? A. Not on all that I have seen. I have carried one myself and every time I went to look at it the cap was down at the bottom.

RXQ133. That is because you were careless? A. No, I would put it in my pocket the same as I would any other.

RXQ134. What experience did you have with the L. E. Waterman pump pen? A. Not much experience. They come in to me to be adjusted, probably a new pen. I have never seen very many of them come through in our repairs.

RXQ135. You don't know whether Horn has made any Remex or Pen & Ink pens for L. E. Waterman Company in the last eight years, do you? A. No, sir.

RXQ136. You have never been in the L. E. Waterman Co. factory? A. No, sir.

By Mr. Bacon:

RDQ137. Will an L. E. Waterman self-filling pump pen stay filled after it is filled? A. Providing you hold the pen down in the ink and then screw the little top on it. If you don't do that, if you pick up your pen after you think it is filled and don't put the little top on, you will lose all your ink. 4640

Deposition closed.

Signature waived.

Adjourned to April 21, 1911, at 10:30 A. M.

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UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY, 4641

vs.

MODERN PEN COMPANY.

Met pursuant to adjournment at the office of Alexander S. Bacon, 37 Liberty Street, New York, April 21, 1911, at 10:30 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Plaintiff.
Alexander S. Bacon, for Defendant.

4642

MRS. LOUISE S. WILSON, a witness called on behalf of the defendant, being duly sworn, testified as follows:

*Direct-examination by Mr. Bacon*:

Q1. Please state your name? A. Mrs. Louise S. Wilson.

Q2. Your residence? A. 9 West 91st Street.

Q3. Your business is housewife? A. Yes.

Q4. How long have you been married to Mr. Wilson? A. Three years, just.

Q5. Before that you were a widow? A. I was.

Q6. Mrs. Hooper? A. Yes.

Q7. And then you were in business? A. I was.

4643

Q8. What was the business? A. Fountain pen business.

Q9. For how many years were you in the business? A. I was in the business even before I was a widow. Mr. Hooper and I were engaged in the same business.

Q10. Mr. Hooper was a fountain pen man? A. Not as much as I was a fountain pen woman.

Q11. How many years were you in the fountain pen business? A. I should have to go back and count up. I was with A. A. Waterman when they first started in business, and before that I was with the L. E. Waterman two years.

Q12. From about 1900? A. Yes.

Q13. Until 1908? A. Yes. I don't know just how many years I have been with them. You know when A. A. Water-

4644

man first started in business.

Q14. For himself? A. Yes. It was not in 1900. I don't know anything about it as far back as that. It must have been about 1904.

Q15. Were you with the old firm of A. A. Waterman & Co. before the reorganization? A. Yes, I was from the start, from the beginning.

Q16. Were you in the firm when Mr. Gibson was a partner? A. Yes, I sold the first pens that were ever made by the company. It was A. A. Waterman & Co.

Q17. Instead of 1904, you mean 1894 or 1895? A. Yes, 1894 or 1895.

Mr. Watson: Counsel for plaintiff objects to all these answers and moves to strike them out, as the witness does not know when any of these facts occurred.

Q18. The A. A. Waterman Pen Company manufactured no pens under that name when you first went with them? A. No.

Q19. Then the firm was changed to what? A. A. A. Waterman & Co.

Q20. Did they manufacture and sell pens then marked A. A. Waterman & Co.? A. Yes, from that time on.

Q21. And from that time were you with him when he was alone? A. How do you mean, alone? 4646

Q22. Was there a time when he was not in company with somebody? A. No. Mr. Gibson was his partner.

Q23. After Mr. Gibson died didn't he have some connection with the Colonial Pen Company? A. The Colonial Pen Company were the selling part; A. A. Waterman & Co. were the manufacturers.

Q24. You were with them then? A. I had charge of the factory office at that time.

Q25. Then when he went in with Frazer & Geyer Company you were still connected with them? A. Yes.

Q26. Were you a saleswoman on the road, or demonstrator? A. I was in the office for awhile, and then I was on the road, as demonstrator, after that. 4647

Q27. Did you also repair pens? A. Yes, I repaired many pens.

Q28. You were with L. E. Waterman Company for how long? A. Just about a year, I should think.

Q29. And when Mr. Waterman went out from that company you went with him? A. I did.

Q30. In the course of your business from about 1894, to say 1908, did you handle many L. E. Waterman pens? A. Do you mean did I sell them?

Q31. Handle them? A. In my demonstrating business I came across a great many of them and I had to handle them.

4648

Q32. And in demonstrating you also sold A. A. Waterman & Co. goods? A. I sold the A. A. Waterman & Co. goods.

Q33. And did you take L. E. Waterman pens in exchange? A. I took all kinds in exchange, also L. E. Waterman.

Q34. How many pens did you handle a week on an average, of the L. E. goods? A. I should say in some places I would have fifty in a week, some places only ten, some only three or four. It depends on the size of the town.

Q35. For how many years were you repairing pens personally? A. When I made the repairs my own self?

Q36. Yes? A. About four years.

4649 Q37. Will you explain the troubles that had usually occasioned the necessity for repairing the L. E. pens; what was usually the matter with them? A. I did not repair as many L. E. Waterman pens—I did not repair many pens; most of them I would take in exchange for the A. A. Waterman & Company pens.

Q38. What was the matter with those that you took in exchange? A. Most of them on account of the joint being under the finger inking the finger from this joint.

Q39. That leak was at the end joint? A. Yes.

Q40. Was there any question about the flow? A. The flow was always very well. Most jointed pens will flow too freely when they are nearly empty, and drop ink.

Q41. That is the universal complaint of an end joint? A. Yes.

4650 Q42. What have you to say of the self-filling middle joint A. A. Waterman & Co. pens in comparison with the very best goods put out by the L. E. Waterman? A. So far as grade and quality goes I should think they were equal, but in the mechanism of it, any joint that is away from the finger is better than under the finger; and the self-filler having no joint at all it is far the best.

Q43. Did you hear any complaint about the sacks in the self-fillers breaking? A. No, I had rare occasion to find it in a sack.

Q44. How long were they warranted? A. Two years. If any sack gave way in that time they would give them another one free of charge.

4651

Q45. How long did they usually last? A. That is, the life of the sack?

Q46. Yes? A. If it was perfect, there was practically no limit to the use of it.

Q47. As long as it was kept filled and moist it would keep good? A. I have seen them tried for a year and worked.

Mr. Watson: I object to that question as horribly leading.

*CROSS-EXAMINATION by Mr. Watson:*

4652

XQ48. These sacks in the self-filling pens, if made all right when they are put in never do give out? A. They would last any length of time. You don't keep track of a pen more than five or six years anyway.

XQ49. All self-filling pens that you ever saw, as you testified, flow too freely? A. When you say all, do you mean every one?

XQ50. Within a dozen or two? A. I think most end joint pens.

XQ51. Does that apply to the end joint pens of the A. A. Waterman & Co.? A. Yes, any end joint pens. The heat of the hand will draw out the ink under the joints.

4653

XQ52. Does the heat of the hand expand the ink in the self-filling pens and cause that to flow too freely? A. The ink in the self-filling pen is so well protected from the heat and from the cold that it does not affect it in the same way. It is twice protected. It is in the holder and also in the sack.

XQ53. So that is never affected by the heat of the hand? A. No.

XQ54. Do the self-filling pens all leak around the feed at the end of the holder? A. Do you mean to drop the ink out at that point?

XQ55. Does the ink all come out around the end of the nozzle of the holder in the self-filling A. A. Waterman & Co. pens? A. All pens kept moist around the pen itself should feed all the time if it is a well working pen.

4654

XQ56. Does the ink in the self-filling A. A. Waterman & Co. pen come out on the back of the feed around the nozzle? A. Yes, it might come out there sometimes. You are not asking me whether it drops ink, are you?

XQ57. No. When it comes out around the nozzle and on the back of the feed it gets on the inside of the cap? A. Very rarely. It does it less than any pen I have ever had my hand on.

XQ58. Have you ever seen the self-filling pen put out by the L. E. Waterman Company? A. I have seen one.

XQ59. Does the heat of the hand force the ink out of the pen? A. This particular pen that I saw had no sack in it; it

4655 was as faulty as the other ones were. It was a pump pen, not a sack pen.

XQ60. You are not familiar with the sack pens, self-fillers, made by the L. E. Waterman Company? A. No.

XQ61. How long since you have been in the business? A. Three years. There are a few dealers that had L. E. Waterman self-filling pens. The pump pens that they tried were not satisfactory, and dealers did not keep them.

XQ62. Are you familiar with the safety pen put out by the L. E. Waterman Company? A. I am not.

XQ63. What year were you with the L. E. Waterman Company? A. It must have been 1895. I did not look up any date. It might have been 1895.

4656 XQ64. You don't know when you were with the L. E. Waterman Company? A. Not exactly, but it was the year the A. A. Waterman Pen Company was started in St. Louis, where I started the business.

XQ65. What were your duties with the L. E. Waterman Company? A. I sold the city trade, also at retail.

XQ66. Did they have a store in St. Louis at that time? A. No, I was representative.

XQ67. Do you know that A. A. Waterman had no partners after Mr. Gibson dropped out in February, 1899, for a considerable period? A. Yes.

XQ68. He was doing business during that period under his own personal name, A. A. Waterman? A. "A. A. Waterman & Co., manufacturers."

XQ69. Don't you know he was doing business during that period without any partner, under his own name? A. He had no partner.

XQ70. And he marked his pens "A. A. Waterman, Maker, Boston"? A. Yes.

XQ71. He had no partner at that time? A. No.

XQ72. Were you with Mr. Waterman when he and Mr. Gibson dissolved partnership in February, 1899? A. Yes.

XQ73. Do you know that all the stock he had on hand was turned over to Rhodes Lockwood at that time? A. Yes. 4658

XQ74. And Lockwood, to satisfy his claim, took everything that Waterman and Gibson had? A. I was not in Boston at the time and I don't know just how much they did take.

XQ75. You know they took everything they had? A. I know they formed a company then themselves, as the Sterling Company.

XQ76. Do you know when A. A. Waterman made his arrangements with the Colonial Pen Company and became an officer of that company? A. Do you mean the date?

XQ77. Yes. A. I cannot tell you the date. I am not strong on dates unless I look them up.

XQ78. Were you employed in the office of the Colonial Pen Company in Boston? A. I did some outside work first, then some soliciting in the town. I did some work for them and also was at the factory for the Colonial Pen Company and also at the factory for A. A. Waterman & Co. 4659

XQ79. Do you remember that the factory you refer to was in Somerville? A. West Somerville.

XQ80. Do you remember it was owned by the Colonial Pen Company? A. I did not know that it was owned by them.

XQ81. Don't you know that the Colonial Pen Company supplied all machinery and all the parts that were used in the manufacture, except what few were made in the factory? A. That they supplied what?

4660

XQ82. All the parts of the pen they bought outside, except the parts that were made in the factory itself? A. All rubber turning was done there.

XQ83. The Colonial Pen Company furnished the gold pens? A. I don't know. I know they were shipped to the A. A. Waterman Company.

XQ84. Who were Mr. Waterman's partners in that factory? A. There was nobody in the factory.

XQ85. He did not have any partners in the factory, did he? A. Some of the Colonial Pen Company may have been his partners in the factory.

XQ86. Don't you know he was simply an employee of the
4661 Colonial Pen Company and running the factory for them? A. No, I do not.

XQ87. Do you know that Mr. Waterman himself personally had never invested any money at all in the factory? A. I don't know anything about his personal investments.

XQ88. And for all you know that factory was owned by the Colonial Pen Company? A. I could not say whether it was.

XQ89. When you were repairing pens—what period was that? A. From 1903 on.

XQ90. That is when you were connected with the Frazer & Geyer Company in New York? A. That was A. A. Waterman & Co.

XQ91. You were never connected with the Frazer & Geyer
4662 Company? A. No.

XQ92. Who paid you at that time? A. I made drafts when I was out on the road on the A. A. Waterman Company.

XQ93. You drew drafts on A. A. Waterman & Co.? A. Yes.

XQ94. And that was the period when you were repairing pens? A. I was repairing pens then and demonstrating. Doing an advertising business.

XQ95. This period when you were repairing pens was when you were on the road? A. Yes. I also had charge of the repairs in the office before I went on the road.

XQ96. And when you were doing repairs how many pens a week were you repairing? A. I don't know how many a week. I was not repairing very many. I used to take them in exchange, more than repairing.

XQ97. You took all kinds? A. All kinds and I repaired all kinds. If a man wanted his own pen repaired I repaired it for him irrespective of what make it was.

XQ98. As matter of fact, if you repaired ten or fifteen pens a week, Ideal pens, it was a small proportion of the repairs you did? A. I made very few repairs.

XQ99. That would be considered very few repairs, wouldn't it? A. Yes, but we had a method of taking in exchange.

4664

XQ100. What did you do with those pens you took in exchange? A. I would take the gold pens out and weigh them up if they were my own. If they were not I would send them in to the company.

XQ101. You disposed of the pens as old gold? A. Sometimes pens of my own I would dispose of the gold pens. What I mean by that is that I was in business here for awhile taking pens in exchange and with those pens I did that. Of course the other pens belonged to the company and if I had taken any in trade I would bundle them up and take them in, because I had to report on those.

XQ102. Those pens that you refer to now that you took up were A. A. Waterman & Co. pens? A. Any kind of pens.

4665

XQ103. Did you exchange any Waterman Company pens for the stock of the dealers in L. E. Waterman Ideal? A. All kinds.

XQ104. Did you exchange A. A. Waterman & Co. goods for the stock of dealers who had Waterman Ideal pens? A. Do you mean to take theirs in exchange for ours?

XQ105. Yes. A. At first I did; not of late years. It was in the early part of the business.

XQ106. Did you do that as late as 1904? A. No.

XQ107. When did you stop doing that? A. I should say that I probably did that only the first or second year in business.

XQ108. How long have you known of the L. E. Waterman Company pen on the market? A. About 1894, I should say.

XQ109. Is that about the time you went to work for the L. E. Waterman Company? A. Even before that, a little before that. A little while I was in the stationary business where they sold L. E. Waterman pens.

XQ110. They were well known fountain pens on the market at that time, were they not? A. They were at that time I should say the well known fountain pens. Of course the pens were not known as well as they are today by any means.

XQ111. They were about the best known on the market at that time? A. It and the Wirt.

XQ112. Those were substantially the only well known pens on the market at that time? A. There were very few others.

4667 XQ113. Fountain pens were usually sold on the market at that time; dealers generally in the stationary line carried fountain pens at that time? A. They carried them. They were not as prevalent as they are today. They had to be educated up to it. Of course at that time I knew more about the western business.

XQ114. When you were employed by the L. E. Waterman Company, what was the name they usually called the L. E. Waterman goods on the market? A. They called them Ideal.

XQ115. Did not call them Waterman pens? A. Yes, some people called them Waterman pens. A great many people called them Ideal.

4668 XQ116. Waterman pens at that time were well understood to mean L. E. Waterman pens? A. They were the only ones then. The trade-mark was used a great deal.

XQ117. What was the trade-mark? A. Ideal.

XQ118. "Waterman's Ideal Fountain Pen" was on the pen at that time? A. Yes, a little different from now.

XQ119. What is the difference? A. At that time they were only marked with the letters. Now they have the *world* with a ring around it.

XQ120. The only difference or change in marking is the addition of the figure of the globe? A. I could not say that. That is the marked difference.

XQ121. Do you know what was on the gold pen at that time? A. On the Waterman Ideal pen?

XQ122. Yes? A. I would not like to swear to it. I know there was Waterman on it, and I think there was Ideal on it.

XQ123. Do you recall that the Waterman gold pen in every case had "Waterman's Ideal Fountain Pen"? A. On that make. They had other makes, too, that they did not have it on.

XQ124. Do you remember a concern called the Franklin Printing Company of Toledo, Ohio? A. I do.

XQ125. You demonstrated at that store? A. I did.

XQ126. The very last part of your employment by A. A. Waterman & Co., was it not? A. I have not been with them since three years. 4670

XQ127. 1906 or 1907, was it not, when you were demonstrating at the Franklin Printing Company of Toledo? A. About that time.

XQ128. How long were you there? A. I should say a matter of a week or ten days.

XQ128. Do you remember having any difficulty with the Franklin Printing Company? A. No, no difficulty that I remember.

XQ130. Do you remember that after you had demonstrated at that store, they sent back their stock of A. A. Waterman & Co. pens? A. I don't remember it; it did not come into my business, I could not say. I know that when I left there they were well satisfied. 4671

XQ131. Didn't you take up Waterman's Ideal fountain pens from customers of the Franklin Printing Company and give them in exchange A. A. Waterman & Co. pens which you told them were the same make? A. Why should I? I was not advertising the L. E. Waterman line; I was advertising the A. A. Waterman line.

XQ132. You never knew that the Franklin Printing Company of Toledo, returned their stock of A. A. Waterman & Co. pens soon after you demonstrated at that store? A. They did not come into my line. I don't know anything about it. If I heard it I don't remember it.

4672 *Louise S. Wilson*

XQ133. When you were demonstrating fountain pens for A. A. Waterman & Co. did you call an A. A. Waterman fountain pen a Waterman pen? A. Never.

XQ134. That name belongs to the L. E. Waterman Company, does it not?

Mr. Bacon: Objected to, as this witness cannot know.

A. I will tell you why; because we distinctly wanted to advertise the A. A. Waterman line. There would be no conflict with any other kind of pen.

XQ135. You found a lot of confusion, though, between the
4673 two kinds of goods, didn't you? A. No, not such a lot. If any one came in the store and did not know the difference they knew it when they went out.

XQ136. If they came in and asked for a Waterman pen you gave them an A. A. Waterman pen, didn't you? A. Not on their asking that way. If they came in and asked for a Waterman pen—most of the store I saw, they had both lines and probably standing right next to each other, and in that way I should always ask them which Waterman they wanted, whether they wanted an L. E. Waterman or an A. A. Waterman pen, and if they wanted to know the difference I would explain it to them. Any one that insisted on an L. E. Waterman pen always got it.

XQ137. They always had to insist on it, though, to get it?
4674 A. No, I would explain it first to them. If any one insisted on having anything I would sell it to him.

XQ138. What was the explanation you used to give? A. I would show them the difference in the mechanism and the difference of the self-filling pen over the old joint pen. Besides, when I advertised in a town it was natural that they would come and look at my pens, and sometimes they would make a mistake and not say A. A. Waterman pens, meaning ours all the time, and I would not leave them under the impression that they were getting something that they did not want.

XQ139. Did you advertise the A. A. Waterman Company pens as Waterman pens? A. Never.

4675

XQ140. When did the A. A. Waterman & Co. first make the self-filling fountain pens; when did you first sell self-filling pens for A. A. Waterman & Co.? A. It was when the Colonial Pen Company was the selling agent in Boston.

XQ141. That was not the character of pens they are selling now? A. No, it is improved now. It was a sack pen at that time.

XQ141. Entirely different in construction from the one they sell today? A. Not so different, only improved.

XQ142. What was the difference? A. At that time the sack had to be taken out of the holder and stripped with the fingers, and they afterwards made it automatic by just turning the button.

4676

XQ143. Didn't you have a good deal of difficulty that the button used to break off? A. No, not much.

XQ144. Did you know that A. A. Waterman & Co. found that that button was so defective they had to strengthen it, in the last year or two? A. I don't know that.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ145. Has there been any substantial change in the leading pens manufactured by L. E. Waterman & Co. since you first knew it, in about 1894 or 1895?

4677

Mr. Watson: Objected to as this witness has shown that she was not familiar with the goods as at present put out.

A. I know that the original pen—not speaking of the self-filler, because I am not acquainted with the self-filler pens—has been changed in the matter of the feed; I know that.

RDQ146. In any other respect has it been changed? A. As to the holder, no.

RDQ147. When was the change in feed made, about when? A. I could not tell you that.

RDQ147*a*. Was it eight or ten years ago, or less? A. It does not seem to me it is ten years.

4678

RDQ148. This L. E. Waterman self-filler with a sack has come on the market since you left the business? A. I think there was some before then, but I had never seen them.

RDQ149. You had a store of your own for a long time before you were married? A. Just a year.

RDQ150. And you were always employed by Mr. A. A. Waterman? A. What do you mean by always?

RDQ151. During all of this time. You represented him especially? A. Did I represent him personally, especially?

RDQ152. Yes. A. What do you mean by that. I always represented the company as far back as I have told you.

4679

RDQ153. He originally employed you? A. Yes, he did originally.

RDQ154. And you can say whether or not he was a successful salesman of pens? A. Wonderfully so. I have heard people say he was the best there is.

RDQ155. Your own opinion confirms that judgment? A. It does.

RDQ156. And you believe that there is no one in the country who can sell pens like A. A. Waterman? A. Yes.

Mr. Watson: I move to strike out the answer as incompetent, irrelevant and immaterial.

RDQ157. That is the general reputation in the trade? A. Yes.

4680

RDQ158. And after he began to manufacture did people very frequently call the A. A. Waterman pens the Waterman? A. Do you mean dealers?

RDQ159. No, people in general? A. Do you mean right away?

RDQ160. At any time? A. Do you mean all during that time?

RDQ161. Yes, after he began to manufacture A. A. Waterman & Co. pens did the people frequently call them Waterman? A. Yes, they did, many times.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ162. Because they were mistaken? A. No, I don't know that they were mistaken sometimes both ways.

RXQ163. The L. E. Waterman Company, while you were familiar with their goods, made a great many different styles of holders and fountain pens? A. Not many styles, no.

RXQ164. When you first were connected with them did they make a holder like the one I now show you, Plaintiff's Exhibit No. 1, a chased holder in this style (showing witness Exhibit No. 1).? A. At the first, do you mean, the very first?

RXQ165. Yes. A. No, I don't think they looked just like 4682
that.

RXQ166. Was it not the fact that they did not make any pen at that time with what is known as the cone cap? A. The overcap; they made the overcap in 1894.

RXQ167. Are you prepared to swear that in 1894 the L. E. Waterman Company made a cone cap pen? A. Yes, by all means.

RXQ168. In 1894? A. Yes. They have been ever since I have known anything about their pens; they have had one of those caps, because I understood A. A. Waterman first improved and made the caps for L. E. Waterman Company.

Mr. Watson: I move to strike out the answer as incompetent and immaterial. 4683

RXQ169. You had no personal knowledge of that fact, did you? A. No, I just heard it.

Mr. Watson: I move to strike out the answer as incompetent.

RXQ170. When you were selling L. E. Waterman pens they had a good reputation on the market as fountain pens, did they? A. They always had a good reputation.

RXQ171. A good reputation today? A. Yes.

RXQ172. Among the best on the market? A. Among the best what?

4684

RXQ173. The best fountain pens on the market? A. Yes, they are among the best.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ174. You demonstrated for Scranton & Wetmore of Rochester? A. Yes, a number of times.

RDQ175. Are they one of the largest stores of their kind? A. They are.

RDQ176. In Rochester or Western New York? A. Yes.

*RE-CROSS EXAMINATION by Mr. Watson:*

4685

RXQ177. Are you familiar with Vosburg & Whiting, of Buffalo? A. No.

RXQ178. You don't know that concern at all? A. No.

RXQ179. Do you know the Willis P. Whiting Stationery Company of Buffalo? A. No.

RXQ180. You are not prepared to say that Scranton & Wetmore are the largest dealers in Western New York? A. They are among the largest that I have seen.

Deposition closed.

Signature waived.

4686

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JAMES T. NAULT, a witness called on behalf of the defendant, being duly sworn, testified as follows:

*Direct-examination by Mr. Bacon:*

Q1. Please give your name, residence and business? A. James T. Nault; my residence is 58 Grand Street, Union Course, Long Island. My present employment is at 159 Leonard Street, with Mr. P. D. Collins & Co.

Q2. What is your business? A. Gold pen manufacturing.

Q3. How long have you been in the manufacture of gold pens? A. I have been twenty-five years; going on twenty-six.

Q4. Will you state with what concerns or corporations you have been during this time? A. I have been with E. Wiley, between eight and nine years.

Q5. Did you learn the business from him? A. I did. After that I became connected with Aiken-Lambert Company for close on to two years; and in my present place, P. D. Collins, fourteen years.

Q6. What is now your special duty in connection with the manufacture of pens? A. Grinding gold pens.

Q7. Is that the most important part of all in its manufacture? A. It is, in my estimation. 4688

Q8. And commands the highest skilled labor? A. Yes.

Q9. Are you familiar with the pen points manufactured by A. A. Waterman & Co.? A. I am familiar with the pens in this respect, that I have seen some of them and those that I have seen are A-No. 1 pens.

Q10. You have been in their factory? A. I have been in their factory.

Q11. Is their machinery of the latest and most improved pattern?

Mr. Watson: Objected to as immaterial and incompetent.

A. I can say that their machinery is the same as used in all first-class shops. 4689

Q12. Do they have any machines that are not used in other shops, calling especial attention to the hydraulic press? A. Yes, there is one, that is the hydraulic press.

Q13. Is that used by Collins? A. No.

Q14. How do they make the gold homogeneous? A. By the hand hammer.

Q15. In your concern they do not make holders at all? A. No.

Q16. Are you connected with a union? A. Yes.

Q17. What union? A. Gold Pen Makers Union.

4690

Q18. How long have you been connected with it? A. Ever since they have organized. It must be 12 or 14 years. I could not exactly say.

Q19. Have you been an officer? A. I have.

Q20. What officer? A. I have been connected with the Executive Board and also President of the Gold Pen Makers Union.

Mr. Watson: I move to strike out all this testimony as immaterial and irrelevant.

Q21. Is it one of the duties of the Union to see to it that their men are of the first class in efficiency? A. Yes.

Q22. What were your duties as executive member?

4691

Mr. Watson: The same objection.

A. The duties of an executive member is to see that all men are treated fairly. If there is any grievance arises they are to handle all such cases.

Q23. You are practically a judge in case of trouble? A. Yes.

Mr. Watson: I move to strike out all this testimony as immaterial and irrelevant.

Q24. Is the A. A. Waterman shop what is termed a union shop?

Mr. Watson: The same objection and motion.

4692

A. Yes.

Q25. Do you know Mr. Newman who selects the iridium? A. I do.

Q26. What have you to say as to his qualifications?

Mr. Watson: The same objection, as immaterial and irrelevant.

A. From my personal knowledge he is considered one of the best in the business.

Q27. And his specialty is the selection of points from commercial iridium? A. Yes.

4693

Q28. What can you say of the workmen employed by the A. A. Waterman & Co? A. From observation and what I know of the men employed there, they are skilled mechanics.

Q29. Are they of the highest grades in their respective tasks? A. Yes.

Q30. Have you been in the present factory of L. E. Waterman Company? A. I have.

Q31. When was that? A. During the time of the opening.

Q32. When was that? A. In the month of August, I believe; I could not tell you the exact date.

Q33. Last year? A. Last year.

Q34. Then they have been in their new factory only since last August? A. I believe they were in the factory prior to the opening, but what length of time I could not really say. 4694

Q35. Did you go through the factory at that time? A. I did.

Q36. Is that what is known as a union shop?

Mr. Watson: Objected to as immaterial.

A. No.

Q37. How many of the grinders are experienced men?

Mr. Watson: The same objection.

A. To my own personal knowledge, there is possibly in the neighborhood of say 12 or 15 men.

Q38. Did they employ others that were not first-class men? A. To my knowledge they have. 4695

Q39. About how many grinders did they have that were boys and young people? A. In the neighborhood of probably 30 or 40.

Q40. Inexperienced workmen? A. As I classify inexperienced, yes.

Q41. How many of their grinders belong to the union?

Mr. Watson: Same objection.

A. In the neighborhood of probably four or five at present.

4696

Q42. What kind of a pen do they turn out in their present factory? A. In my judgment I classify the work of poor quality.

Q43. Do they also get pens from other sources? A. They do.

Q44. From whom? A. From Fairchild.

Q45. Are those good pens? A. Yes.

Q46. But the pens manufactured in Waterman's own shop you would classify as inferior? A. I would.

Mr. Watson: I move to strike out the testimony of this witness as immaterial and irrelevant to any issue in this case and largely hearsay, and matters of opinion, which have no weight or bearing as evidence; and subject to this motion I will cross-examine.

4697

*CROSS-EXAMINATION by Mr. Watson:*

XQ47. Have you been in the present pen manufacturing shop of Aiken-Lambert Co.? A. I don't know whether such a shop exists under the name of Aiken-Lambert at the present time.

XQ48. You don't know of any such shop? A. No.

XQ49. Did they ever have a shop to your knowledge? A. They did.

XQ50. When was that? A. When I was employed in Aiken-Lambert, about 14 years ago, between 14 and 15 years ago.

4698

XQ51. You have not known of their having a shop since that time? A. Yes, prior, until L. E. Waterman connected the two shops together.

XQ52. When was that? A. I couldn't exactly tell you. That is probably in the neighborhood—I know Mr. Ferris had been in control of the Aiken-Lambert Co. four or five years prior to the shop moving into the large building down here.

XQ53. Was that a union shop or non-union shop? A. That was classified as an open shop at that time; partly union men and partly not.

XQ54. Your idea of a skilled workman is largely determined by the fact whether he is a union man or not, is it not? A. Not necessarily so, no.

4699

XQ55. How are you able to judge whether a man is a skilled workman or not if he does not belong to the union? A. By the class of work that he turns out; by his ability, in other words.

XQ56. How do you know what class of work he is turning out? A. I see it.

XQ57. Do you see the pens that the non-union workmen turn out in the L. E. Waterman shop? A. Yes.

XQ58. Where? A. Right in the shop.

XQ59. When? A. The day of the opening.

XQ60. That is the only time? A. And other times that I have come across friends that have purchased pens, knowing that they have been turned out there.

4700

XQ61. You have no personal knowledge of whether they were purchased there or not; you don't know whether they were made in the L. E. Waterman shop, personally? A. No, I cannot take an oath to that because there are pens being made on the outside.

XQ62. Are you able to tell in what shop the pen I now show you was made (handing witness a pen)? A. No, I could not, not with the naked eye. I presume I could not positively if I had a glass.

XQ63. Perhaps the Commissioner will supply you with a glass?

(The witness examines the pen, Plaintiff's Exhibit No. 1, with a small glass.)

4701

A. No, sir; I cannot see with this glass.

XQ64. I show you Plaintiff's Exhibit No. 8, and ask you if you can tell in what shop that gold pen was made (handing witness the exhibit)? A. No, sir; I could not.

XQ65. Were you ever in the L. E. Waterman shop when it was in Rose Street? A. No.

XQ66. Before it was moved to its present place? A. No.

XQ67. You knew that it had a shop there for a number of years? A. I did.

XQ68. For how many years? A. That I could not say. Probably in the neighborhood of four years.

4702

XQ69. You did not know that they had a shop there for ten or twelve years? A. Possibly it might have been ten or twelve; I could not say. I know it was some time.

XQ70. And you have no personal knowledge of the grade or quality of the pens made in the Rose Street shop? A. Only from the past experience, knowing the conditions that existed down there, through hearsay.

XQ71. How many gold pens of the A. A. Waterman Company have you examined? A. Personally I might say that I have never examined any of them thoroughly, with the exception of just looking them over and possibly using them occasionally, now and then.

4703

XQ72. Do you find the hand method of making the gold homogeneous satisfactory? A. We do. Mr. Collins has always.

XQ73. You consider as an expert penmaker that you can make a gold pen as good that way as by any known process, known to you? A. From what experience I have had; of course I am not in a position to say that the hydraulic press will not do the work probably better than the hand hammer. I have not had experience.

XQ74. But with a hand hammer to make the gold homogeneous you can make as homogeneous a pen as can be made by any process known to you? A. Not exactly, because I have never had any experience otherwise.

4704

XQ75. Can you make a first-class gold pen by using the hand hammer instead of a hydraulic press? A. Exactly so.

XQ76. Your answer is yes? A. Yes.

XQ77. The factory of the L. E. Waterman Company that you speak of as visiting, is located here in New York City? A. It is.

XQ78. Describe the size or character of the building, of that factory? A. The size of the building is quite large. The character of the building is very fine in my estimation.

XQ79. It is a ten story large factory building, is it not? A. Yes, if it is ten stories. I don't know how many stories there are.

4705

XQ80. A great many stories? A. Yes, quite a number of stories.

XQ81. And it is all devoted to the manufacture of the products which are sold by the L. E. Waterman Company? A. I think that is so; to my hearsay it is so.

XQ82. When you went through it you did not see any products which were not sold by the L. E. Waterman Company? A. No, I think not.

XQ83. Is this building probably 75 feet by 80 or 90 feet deep? A. I should judge in that neighborhood, yes.

XQ84. How many pens of the L. E. Waterman Company have you examined critically to determine whether it was a good pen or not? A. I can state that I have not examined any of them critically, outside of probably a few that I have seen and looked at them. They have been A-No. 1 pens.

4706

XQ85. I am referring now to the L. E. Waterman? A. Pardon me. What I have seen I can readily say that from my standpoint of view they were not what I classify as A-No. 1 pens.

XQ86. I ask you how many of the L. E. Waterman Company's pens you have examined critically? A. Possibly in the neighborhood of a dozen.

XQ87. And that extends over what period? A. Since I have seen them, or the make of them?

XQ88. Since you have been familiar with the L. E. Waterman Company pens? A. That question is entirely different. I have been familiar with the L. E. Waterman goods for a number of years, but I may say through that period of time the number of pens that I have seen would amount probably to a great deal more than a dozen.

4707

XQ89. How many of these pens did you examine critically as to their quality? A. Pretty near all that I have seen I have examined critically.

XQ90. Some dozen or so? A. Yes.

XQ91. When did you examine them? A. Some of them I examined right there in their own factory. Others I have had given to me to see what trouble there was with them, and ex-

amined them at home, as well as in my own place of employment.

XQ92. Have all those examinations been made recently or have they extended over the period of your business career? A. They have extended over the period of my business career.

XQ93. During that time you possibly have examined some dozen or so pens? A. Yes, possibly several dozen.

XQ94. And you never found any first-class pens? A. Oh, yes; occasionally you come across a good pen.

XQ95. Only occasionally? A. Only occasionally.

XQ96. What is the reputation of the Waterman Ideal Fountain Pen in the market? A. Of course that is something that
4709 I cannot answer, what the reputation is. What the general public estimation is of the Waterman fountain pen I am not at liberty to say.

XQ97. How long have you known the Waterman Ideal fountain pen? A. I guess ever since they manufactured the pen. I remember Mr. Waterman when he started on Fulton Street.

XQ98. That was close to thirty years ago, wasn't it? A. Oh, no; not as long as that; I don't think so; no, I guess not. Thirty years ago would be before my time. Possibly he may have been there before I had been in the business and I remember his being there when I was quite a boy.

XQ99. He afterwards removed to 157 Broadway? A. I could not say where he moved to; it is so long ago I have for-
4710 gotten.

XQ100. Do you remember the L. E. Waterman Company having a place of business on Broadway between Cortlandt and Liberty Streets? A. I guess they did. That was prior to the place they are in at the present time.

XQ101. They were there for a good many years? A. Yes, I guess they were.

XQ102. And those pens made by the L. E. Waterman Company are generally spoken of in the trade as the Waterman fountain pens? A. Yes.

XQ103. That is the name by which they generally refer to them? A. Yes.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ104. And since A. A. Waterman came into the field how were his pens spoken of? A. From my own observation they were spoken of very highly.

RDQ105. Were they spoken of as Waterman pens or A. A. Waterman pens? A. A. A. Waterman pens.

RDQ106. Do you know the reputation of the L. E. Waterman goods in the trade? A. Yes, I do.

RDQ107. Among the manufacturing operators? A. Yes.

RDQ108. What is it? A. Their reputation is that they turn out—you understand me, when I say reputation; do you mean of their own manufacture? 4712

RDQ109. Yes, their own manufacture?

Mr. Watson: Are you speaking of the fountain pens?
Mr. Bacon: I am speaking of the gold pens.

A. The gold pen manufactured by L. E. Waterman throughout the trade, is poor class work.

RDQ110. Did you see a very large quantity, going into the thousands of pens in one bunch, if I may so term it, when you visited the factory in August last? A. Yes, I did.

RDQ111. How many were there in the parcel? A. That would be a very hard thing to make a guess upon; a great number.

RDQ112. Many thousands? A. I should presume from 20,000 to 30,000 pens. 4713

RDQ113. Did you examine them to find out what kind of iridium they were? A. Those that I looked at were soft iridium.

RDQ114. And manufactured iridium? A. Known as manufactured iridium.

RDQ115. And you took samples of this large quantity that they had there on exhibition? A. Yes.

RDQ116. Is it not a fact that no one else can use this new hydraulic machine excepting the A. A. Waterman people; that it is a patented machine? A. As a patent of the A. A. Waterman Company I should suppose not.

4714

RDQ117. Is it your opinion as an expert manufacturer of 25 years' experience, that gold, if subjected to hydraulic pressure from 15 to 20 tons, by a series of rapid impulses, would be more homogeneous than gold hammered out by hand? A. As I stated before, I have never had any experience, but it seems practical enough that it should be a better proposition than the hand hammer.

RDQ118. In this factory of the L. E. Waterman Company do they manufacture ink and all sorts of things, besides pens? A. I believe they do.

RDQ119. Show cases? A. I don't know whether they manufacture show cases or not.

4715

RDQ120. Do you know how many floors they had devoted to the manufacture of fountain pens? A. To the pen proper or the fountain pen itself?

RDQ121. The whole business, the pen and the handle? A. I might state possibly three floors; no, probably four floors.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ122. What was done on the rest of the floors in the ten stories and two basement building? A. I believe that had a floor for storing ink, a show floor, where they exhibited their goods, as regards ink and pens; and if I am not mistaken there were floors there probably for manufacturing ink. I tell you candidly

4716

I was not interested in the other floors outside of pen making.

RXQ123. As matter of fact you are not prepared to say that eight of these floors are used exclusively for the manufacture of fountain pens, in some of its processes? A. No, I am not.

RXQ124. The ink that you speak of was manufactured entirely in the basement, was it not? A. I did not go down in the basement.

RXQ125. Do you make a first class pen in Mr. Collins' factory? A. I presume we do.

RXQ126. Do you make as good a gold pen in that factory as is on the market? A. Yes.

RXQ127. And you make your pens by hand hammer, don't you? A. Yes.

4717

RXQ128. And you consider those as good as any on the market, don't you, in your opinion? A. Yes.

RXQ129. In your opinion are not those pens as good as those put out by the A. A. Waterman & Company? A. As good?

RXQ130. Yes? A. The writing quality, I should say they are, and possibly the whole get-up.

RXQ131. When you examined these thirty or forty thousand pens you just picked up one or two pens at random? A. I picked up probably a dozen.

RXQ132. You examined the iridium? A. Through a glass.

RXQ133. Can you distinguish whether iridium is soft or manufactured, as we call it, or hard, by a glass? A. Yes, very readily. 4718

RXQ134. Please look at the pen I now show you, Plaintiff's Exhibit No. 8, and examine it with a glass? A. That glass (referring to small pocket glass) is absolutely useless to me. I could not see anything.

RXQ135. You are not able to determine? A. With a glass of that kind, no.

Mr. Bacon: I wish it to appear on the record that this is a hand glass produced by the Commissioner, that he carries in his pocket.

RXQ136. Would you be surprised to know that the L. E. Waterman Company use no manufactured iridium whatever in the manufacture of their gold pens for the Waterman Ideal fountain pen? A. For how long—or at the present time? 4719

RXQ137. At the present time and since they have been running their factory? A. Yes, I would be very much surprised to hear it.

RXQ138. That in the pen that they manufacture they use nothing but the native iridium? A. I should be very much surprised to find out that they had any native iridium, or hard iridium.

RXQ139. What is the price today of native iridium? A. I am not in a position to state the prices of hard iridium today because I am not a purchaser of that material.

RXQ140. It is the purpose of the pen maker's union to force all pen makers, which you consider skilled, to join the union, is it not? A. No, we absolutely don't force anybody to become connected with the union.

RXQ141. You use every effort to induce them to join the union? A. No, sir, we do not; we simply approach them and ask them if they wish to become members, and if not we never bother them.

RXQ142. Do you call any strike in the open shops? A. No, there are several open shops at present.

RXQ143. You never call a strike for that reason, because
4721 the shop is an open shop? A. Not to my knowledge.

RXQ144. You are unable to determine without a glass whether the iridium is soft or native iridium? A. Yes, I am unable.

(A glass is produced and handed to the witness.)

RXQ145. I show you Plaintiff's Exhibit No. 8 and ask you if you will tell us whether that is soft iridium or hard iridium, on the point of that gold pen? A. That is hard iridium.

RXQ146. I show you Plaintiff's Exhibit No. 1 and ask you the same question? A. That is hard iridium.

Mr. Bacon: We ask the complainant to produce any $2.50 Ideal pen No. 12.

Mr. Watson: Here is one right here. I just showed
4722 it to him, Plaintiff's Exhibit No. 1, and he has said it is hard iridium.

RXQ147. I show you Plaintiff's Exhibit 14 and ask you whether that is hard or soft iridium? A. I should judge that that was hard iridium.

RXQ148. I show you Plaintiff's Exhibit No. 10 and ask you the same question? A. That is practically a hard point.

RXQ149. I show you Plaintiff's Exhibit No. 33 and ask you about that one? A. That is hard iridium.

RXQ150. Do you find the gold pen in Plaintiff's Exhibit No. 1 better or poorer than the pen in Plaintiff's Exhibit No. 10? A. I shall state that both these pens are distinctly hard; one

is medium point, I would classify; the other is narrow and broad. There is no comparison in regard to the marks, because one is a medium mark and the other a broad mark.

XQ151. What about the quality of the pen? A. The same thing; they are both practically hard points, but one pen has got a larger piece of iridium on than the other.

RXQ152. Which one has the larger piece of iridium? A. No. 1 has got the largest piece of iridium.

RXQ153. And that you consider an advantage or disadvantage? A. There is no disadvantage or advantage, because hard iridium will stand wear. This has more possibilities of breaking off than the small piece.

4724

Mr. Bacon: I wish it to appear upon the record that No. 1 is an L. E. Waterman pen that retails for $2.50, and the No. 10 is an A. A. Waterman pen that retails for $1.

Mr. Watson: Objected to as positively improper and an incompetent statement, and not in accordance with the testimony.

RXQ154. I show you Plaintiff's Exhibit No. 1 and Plaintiff's Exhibit No. 141, and ask you to compare the pens in those two fountain pens? A. As regards to the iridium?

RXQ155. Yes? A. The iridium is practically the same.

RXQ156. Are the pens substantially the same size? A. No, they are not. 4752

RXQ157. Which one is the larger or heavier pen? A. I presume, judging from the size, the No. 1 ought to be the heavier pen. One is a stub and one is a long head. They always make a stub a little heavier than they do a long pen.

RXQ158. Otherwise they appear to be the same size? A. No, they do not; they are different in size, I think.

RXQ159. Which is the larger in size? A. The No. 1.

Mr. Watson: Let it appear on the record that No. 1 is a Waterman Ideal fountain pen that retails for $2.50 and No. 141 is an A. A. Waterman & Co. pen that retails for $3.

4726

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ160. I show you two pens and ask you what kind of pens those are (handing witness pens)? A. There is so little on one of these pens—I might say that that is not practically a hard point.

RDQ161. Are they not both manufactured iridium? A. I should say they might be, yes.

RDQ162. And they are both marked Ideal? A. I don't know. I have not looked at the marking.

Mr. Bacon: They are offered in evidence, both marked Waterman's Ideal.

4727

Mr. Watson: Objected to as incompetent.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ163. The two pens that you have examined last, produced from some unknown source, I would like to have you examine and tell me if you do not think those pens have been repointed since they were originally made? A. It is a pretty hard matter to distinguish whether a pen is repointed after it is ground. Practically one point is broken off of one of these.

RXQ164. Both of them show that some accident or some repair has been made, don't they? A. No, I am not in a position to say that there has been a repair made to both those pens. There may not have been any repair made to either one of these pens. One is all battered up. The other one I should say was never repointed.

4728

RXQ165. Do both the pens show use? A. From their appearance they show use.

RXQ166. A good deal of use? A. I cannot say a good deal. They might have been lying in ink some time. That pen (indicating) has been in ink. I could not say how long it has been used.

RXQ167. Both of them have been used? A. Yes, I should think so.

RXQ168. You are not prepared to say positively that they never have been repointed? A. One of them has never been touched. Of course, if they were repointed there would be a mark of some description. The other one, the point is off that one side. I am not in a position to say.

By Mr. Bacon:

RDQ169. Does not the fact that one of these pen points is broken indicate that it has not been repointed? A. No, I cannot say that.

The two pens referred to are offered in evidence and marked Defendant's Exhibit A-69. 4730

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TIMOTHY SWEENEY, a witness called on behalf of the defendant, being duly sworn, testified as follows:

*Direct-examination by Mr. Bacon:*

Q1. State your name, residence and business? A. Timothy Sweeney; residence, 292 Vermont Street, East New York, Brooklyn; business, rubber turning.

Q2. How long have you been engaged in the business of turning rubber? A. Seven years and a half.

Q3. Where were you employed? A. D. W. Beaumel; and Sanford and Bennett. 4731

Q4. Who next? A. Langill.

Q5. Who else? A. L. E. Waterman.

Q6. Are you at work for L. E. Waterman now? A. No, now A. A. Waterman, after L. E. Waterman.

Q7. How long have you been working for A. A. Waterman? A. Ten months.

Q8. How long were you working before that for L. E. Waterman? A. Three years about; three years and ten months; close on to four years.

Q9. Where was their factory when you were working for them? A. Rose and Duane Streets.

4732

Q10. Have you been into the new factory? A. I have not worked there, but I have been in there.

Q11. Where is that? A. 40 Fletcher Street.

Q12. What are your duties with A. A. Waterman & Co.? A. Turning barrels.

Q13. Have you turned all parts of the fountain pen handles? A. Everything; the cap and the barrel and the section.

Q14. What kind of men does A. A. Waterman & Co. employ in their factory?

Mr. Watson: Objected to as immaterial.

A. All first class turners.

4733 Q15. All experienced men?

Mr. Watson: The same objection.

A. Yes.

Q16. Any boys or girls? A. No boys or girls.

Q17. Any learners? A. No, they have not got any learners there at all.

Q18. What kind of rubber do they use?

Mr. Watson: The same objection.

A. American hard rubber.

Q19. What is called Akron? A. Yes, Akron, Ohio.

Q20. You have used other kinds of rubber? A. There may

4734 be different names. I don't know the names of the rubber but I have turned Butler's rubber. That is what they used in the L. E. shop, for the Aiken & Lambert work.

Q21. Which is the better rubber, the Aiken-Lambert or the A. A. Waterman? A. The A. A. Waterman & Co. rubber is better.

Q22. The Akron is better than the Butler? A. Yes.

Q23. A higher price? A. I don't know about the higher price, but it is better.

Q24. Were the Aiken-Lambert people and the L. E. Waterman people together in any way when you were working for them?

4735

Mr. Watson: Objected to as immaterial and incompetent.

A. That is something I could not exactly tell. They were supposed to be together. It was in the one firm, but one minute you could be working with L. E. Waterman Company and the other minute working for Aiken-Lambert. You could not figure that out at all.

Mr. Watson: I move to strike out the answer.

Q25. How many men did they employ in the making, repairing and handling of the fountain pens in the L. E. Waterman shop? A. Do you mean the rubber part?

4736

Q26. The rubber part? A. About nine turning rubber.

Q27. How many of them were experienced men?

Mr. Watson: Objected to as incompetent, irrelevant and immaterial.

A. I could not tell whether they were experienced because they did not do such good work over there, so you could not judge on that.

Q28. Was not their work of the first grade? A. No, it was not as good as the L. E. work, the work they were doing over there.

Q29. Was the work that they were doing largely Aiken-Lambert work? How were the pens marked? A. Aiken-Lambert and Mercantile and they had a Capital pen.

4737

Q30. Did they make any pens over there that were marked Ideal? A. No.

Q31. They got all that work where? A. I don't know where.

Q32. Did they formerly use the American Hard Rubber? A. They had been using it but they changed off and used Butler.

Q33. Do you know why they did it? A. The boss said that rubber was going up in price and they could not pay what they demanded.

Q34. Did they have any learners over there in turning rubber when you were there?

4738

Mr. Watson: Objected to as immaterial and irrelevant.

A. Yes, we had a couple of learners.

Q35. How often have you been in this new factory? A. Twice.

Q36. How many floors are there used in the fountain pen business? A. Do you mean in just the rubber or the pen part?

Q37. Either or both? A. I was only on one floor. That was the rubber department. I have not been in any other floor.

Q38. Did you ever have to work on any material that came from the Day factory in Seymour, Connecticut? A. Yes.

4739 Q39. What did you do to it? A. There were about fifteen thousand holders turned over again, for what purpose I don't know.

Q40. They were not satisfactory? A. I don't know if they have been used or not. Some have been used and some have not.

Q41. Was it material that had come from the Day factory? A. It must have been. They never did it over there.

Q42. Was it marked Ideal? A. Ideal and Waterman. It had a number, and all that.

Q43. What can you say as to the comparative quality of the Day rubber and the Akron rubber? A. It is hard to tell after the holder has been made and has been lying around for a while; it is hard to tell; still, there was nothing extra in it when I

4740 did turn it.

Q44. Is the Day rubber any better than the Akron rubber?

Mr. Watson: Objected to as incompetent, irrelevant and immaterial, and it is not shown that the witness is competent to answer.

A. Not the work that I turned; I didn't see any difference.

Q45. In the new factory do they employ girls? A. Yes, they have girls working on buffing pens.

Q46. What kind of labor do they use in chasing? A. A girl does all the chasing. More or less of it the girls do the chasing.

Q47. Very cheap labor? A. I don't know what they paid them. They pay them about $9 a week, I guess. 4741

Q48. Who does the assembling? A. In what way?

Q49. What kind of laborers assemble the parts?

Mr. Watson: Objected to as incompetent and immaterial.

A. I don't know; they don't do them down there.

Q50. Putting the pens in the holders? A. They have men doing that.

Q51. Are they experienced men?

Mr. Watson: Objected to as immaterial and irrelevant. 4742

A. To my knowledge they ought to be; they are working at it long enough.

Q52. Have they not got a number of boys and girls in the assembling of parts?

Mr. Watson: Objected to as highly leading and improper in view of the answers of the witness to the previous questions, and the Court's attention is called to the highly leading character of the question and the attempt to discredit his own witness.

A. Everybody they have got, they put them right in; they don't know nothing and they learn them. They don't take outsiders in there, experienced people. 4743

Q53. Do you know how much they pay people who assemble the parts?

Mr. Watson: Objected to as not within the knowledge of the witness.

A. It is hard to tell that, but from what I have heard, they make around $16 a week.

Mr. Watson: I move to strike out the answer as incompetent.

4744 *Timothy Sweeney*

Q54. Why did you leave the L. E. Waterman Company and go to A. A. Waterman & Co.?

Mr. Watson: Objected to as immaterial.

A. They promised me more money and I never got it, and I left and got more money than I got over there.

Q55. Are they all experienced men in the factory of the A. A. Waterman & Co.?

Mr. Watson: Objected to as immaterial and irrelevant and not within the knowledge of this witness.

A. Yes.

4745 Q56. What do you say about A. A. Waterman & Co. insisting on the quality of the work being better than what you had done before?

Mr. Watson: The same objections.

A. Because they are paying a better price and they can demand better work.

*CROSS-EXAMINATION by Mr. Watson:*

XQ57. As a matter of fact you were always employed by Aiken-Lambert, weren't you? A. That is a hard thing to tell. One minute Mr. Ferris was supposed to be the boss and the next

4746 minute Hays was supposed to be the boss.

XQ58. Didn't you know Mr. Ferris was the manager of the manufacturing department of the Aiken-Lambert Company while you were there? A. I heard Mr. Hays was head man.

XQ59. You did not know that Mr. Ferris was in charge of the manufacturing department of the Aiken-Lambert Company all the time you were employed there? A. I was told that and then I was told something else. I was told both things. I never went into details to find out who was the head one. When it came down to the money part, they said Ferris was the head man.

XQ60. You did not know that Mr. Ferris was in charge of the manufacturing department of the Aiken-Lambert Company and

has been ever since they had any interest in this concern? A. When I came there first, that is when they got hold of him, and they said it didn't come true until the following year, in May; so the following year they put the time clock in there and it was said to be Waterman's.

XQ61. That is when Mr. Ferris took charge of the factory? A. I suppose so.

XQ62. All the pens that you manufactured were marked Mercantile or Capital or some special name? A. Yes.

XQ63. You never made any pens marked Waterman's Ideal Fountain Pens? A. No, nobody else ever did down there.

XQ64. They did not make any of those pens down there at all? A. No. 4748

XQ65. These pens that you re-turned, those were some damaged parts that had to be re-turned, weren't they? A. I don't say that they were damaged. The casing was too far down and the cap would go over the casing.

XQ66. Don't you know as matter of fact that these were all rejected holders that had to be re-turned? A. I don't know. We had to do them all over again.

XQ67. You made the Mercantile and Capital pens out of them? A. I couldn't say that, because I never saw the pens done up; I saw them turned and sent back.

XQ68. Do you know what price the Mercantile and Capital pens sell for, retail? A. $1 and $1.50.

XQ69. That is called the cheaper grade of pen? A. It is a small pen. All their pens are the same way only the larger pens are dearer than the small ones. 4749

XQ70. You never bought any rubber for A. A. Waterman & Co., did you? A. No.

XQ71. You don't know where it came from, do you; you have no personal knowledge? A. I saw cases come in. It was marked on in black.

XQ72. That is the only knowledge you have of the matter? A. That is the only knowledge.

XQ73. You never saw any bill for it? A. I saw the bill, sure.

4750

XQ74. Where were those from? A. They were on slips that came in the boxes, American Hard Rubber.

XQ75. Where is Mr. Beaumel now? A. He was on Jones Street and now he is up on Ann and Nassau.

XQ76. He makes a low price pen, doesn't he? A. Yes.

XQ77. Sanford & Bennett make a low price pen? A. They make all kinds of pens. They make plain pens turned by machinery and they make all kinds, hand turned pens.

XQ78. Do you know what the Sanford & Bennett pens sell for in the market? A. I cannot tell.

XQ79. They are mostly a pen that retails for 75 cents and $1? A. Not down as low as 75 cents; about $1 or $1.50.

4751 XQ80. $1.50 is for the larger size? A. Yes. They run up to $5 or $6.

XQ81. Where is Langill? A. He was down on Broad and Front. Now he is up on Barclay.

XQ82. Who does he make pens for? A. I don't know; I couldn't tell you that. He makes the holder and does not make the point. He just does contract work.

XQ83. That is a low grade cheap pen, is it not? A. Yes.

XQ84. The Waterman Ideal fountain pen is a pen of excellent quality, is it not? A. Yes.

XQ85. He makes the highest on the market, doesn't he? A. Yes, it is a good pen, but there are others as good as it.

XQ86. How long have you known about the Waterman Ideal

4752 fountain pen? A. When I went there to work.

XQ87. You never knew anything about it before that? A. Knew about the place?

XQ88. Knew about the pens? A. I have seen the pens.

XQ89. How old are you? A. Twenty-six.

XQ90. How long had you been a rubber turner when you went with Aiken-Lambert Company? A. About two years and a half.

XQ91. You were very young in the business then; you did not consider yourself an expert turner at that time, did you? A. No, but I got the money though.

XQ92. When were you in the factory at 40 Fletcher Street? A. I was there twice. The last time I was there was in January or February.

XQ93. Of this year? A. Of this year.

XQ94. You just went into one floor? A. One floor, the rubber department.

XQ95. That is a large ten story building? A. Yes.

XQ96. When were you there before that time? A. Christmas Eve.

XQ97. What part of the building were you in at that time? A. I was not in at that time. I was there around October, the time I was in there first. I have been around there a couple of 4754
times, just waiting outside to see fellows.

XQ98. Last year? A. Yes.

XQ99. What part of the building were you in at that time? A. The rubber department. I was never on any other floor than the rubber department.

XQ100. Do you know whether the rubber work was done on several floors in that building or one floor? A. I think it was four or five.

XQ101. How many men have you employed at A. A. Waterman & Co.? A. I have not figured that up. I guess they have got about thirteen turners; thirteen or fourteen.

XQ102. How many in the factory altogether, all the workmen? A. There must be about fifty.

XQ103. The factory of A. A. Waterman & Co. is about as 4755
large as one floor in the Waterman factory at 40 Fletcher Street? A. Do you mean the rubber department?

XQ104. The factory? A. I never was on but one floor in the rubber department and they have not got one-half as many as they have got on a floor over there.

XQ105. One floor in the Waterman factory at 40 Fletcher Street is about as large as the whole factory of the A. A. Waterman & Co.? A. No, I don't think so. That is not a large floor over there.

XQ106. How many floors of the Waterman building at 40 Fletcher Street would it take to make the size of the factory

4756 of A. A. Waterman & Co.? A. I guess it would take two floors and then pack them in. Over there they have got everything packed in; there is no room for anything. Everything is close together.

XQ107. Two floors of the Waterman factory at 40 Fletcher Street would give as much floor space as you have in the factory of the A. A. Waterman & Co.? A. Yes, provided it was all put together.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ108. When you were working for L. E. Waterman Com-
4757 pany did they manufacture any Ideal pens in that factory at all?

Mr. Watson: Objected to as the witness has testified that he worked for Aiken-Lambert and does not know that he ever worked for L. E. Waterman Company.

A. They did not manufacture any Ideal pens over there.

RDQ109. They got the holders from Connecticut, did they, the Ideal holders? A. They got them all from Connecticut, the turned holders.

RDQ110. They sometimes chased them there, didn't they? A. They chased them down here in New York.

RDQ111. Where the old factory was? A. Yes.

4758 RDQ112. And that chasing was done by girls? A. Yes, they had two girls.

RDQ113. And they have automatic machines for chasing? A. Yes, it goes by power.

RDQ114. And after those Connecticut holders were chased were the gold pen points put into the holders at the factory? A. Yes.

RDQ115. Where you were working? A. Yes.

RDQ116. That is, the Waterman Ideal fountain pens were assembled in the factory where you were working? A. Yes.

RDQ117. And you worked on Ideal pens? A. I have not been working on them; other people worked on them.

RDQ118. Did you see the assembling of the Remex going on at that factory where you were working? A. Yes.

RDQ119. Do you know where they got their pens? A. They bought some there and they got some from Horn; they got them from several places; I don't know the places; I have heard about it.

RDQ120. The pen points which you speak of went into the holders that you made? A. The L. E.?

RDQ121. No, the pens made by Mr. Horn? A. The pen points they got there were put in L. E. Waterman holders.

RDQ122. The pen points that you got were put in what holders? A. From Horn and other shops they were put in L. E. Waterman holders; but the pens that they got from Aiken-Lambert, they were put in the holders that we were turning. 4760

RDQ123. Don't you know that L. E. Waterman & Company manufactured the gold pens for its Waterman Ideal fountain pens in that factory at Rose Street? A. Yes, they made them there.

RDQ124. And the pen points that they got from Horn went into the Remex? A. No, they went into the L. E. Waterman.

RDQ125. Did you ever put in any? A. No, but I have seen them being put in.

RDQ126. How do you know they came from Horn? A. I was talking to two fellows and they said the outside pens they were putting in were a darned sight better than the pens that were being ground in the establishment. 4761

RDQ127. You don't know anything about it except what you were told? A. That is the fitters that worked at it. They worked at that and got paid days work. I guess they get paid extra for all over the amount they are supposed to.

Mr. Watson: I move to strike that out as immaterial and incompetent.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ128. You have no personal knowledge of where these pen points came from, have you? A. Which pen points?

4762 *Timothy Sweeney*

RXQ129. Any pen points? A. No, but when I worked in Horn's they were doing them there for the L. E. Waterman Co. and having the L. E. name on when they stamped them. When they shaped the pen they had the L. E. name on them because I picked them up and saw them.

RXQ130. Did you have anything to do with the manufacture of gold pens in Horn's factory? A. No, at the time they had the fire in the L. E. shop I went over there to turn rubber. I picked up a pen they were stamping and there was "L. E. Waterman" on it.

RXQ131. Was it not the fact that the only time they got any
4763 pens from Horn that you put into the Waterman pens was right after the fire in the factory? A. They had been putting in before, because I was talking to the foreman.

Mr. Watson: I move to strike out the answer.

RXQ132. Do you know anything about it of your own personal knowledge, except what you were told? A. He asked me if there was much of a fire; he asked me was I burned out over there. Then he inquired how they were putting on the new fellows to learn how to grind. Then he said it would take a long time before they would be able to do all their pens; that meaning, until they got enough broken in over there to grind pens so that they would not need any from the outside.

4764 Mr. Watson: I move to strike out the answer as incompetent.

RXQ133. At the time you speak of they had a rather extensive fire over at the factory where you were working? A. Yes.

RXQ134. It put them all out of business for a while? A. I guess for two or three months.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ135. When you were working for Horn did you see them stamp pens marked Ideal? A. Yes.

RDQ136. And that was during some years? A. They have been doing that for years, yes.

By Mr. Watson:

RXQ137. How long were you working at the Horn factory? A. About two weeks.

RXQ138. That is the only time you have been in Horn's factory? A. Yes. I was in there once before for a job.

RXQ139. That is the only time you saw any pens made at Horn's? A. Yes.

RXQ140. And that was right after the fire? A. Right after the fire.

4766

By Mr. Bacon:

RDQ141. You got your information from the foreman? A. I was talking and that is how I heard it; I and a couple more.

Deposition closed.

Signature waived.

Recess.

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ASA A. SPEAR, a witness called on behalf of the defendant, being duly sworn, testified as follows: 4767

*Direct-examination by Mr. Bacon:*

Q1. Please state your name, residence and business? A. Asa A. Spear; I am a lawyer; my office is at 79 Wall Street; my house, 269 New York Avenue, Brooklyn.

Q2. How long have you been admitted to the bar? A. Since the spring of 1868.

Q3. Do you represent A. A. Waterman & Co. and have you in the last few years? A. I have off and on for quite a number of years last past, by spells.

4768 *Asa A. Spear*

Q4. Were you consulted with reference to the purchase of the effects of A. A. Waterman & Co. and the Modern Pen Co. by L. E. Waterman Company? A. Yes.

Q5. About when? A. As near as I can remember it was either in the late spring or very early summer of 1909.

Q6. Whom did you see in reference to it? A. I saw Mr. Raymond of Watson & Raymond, if I remember correctly.

Q7. What was the first conversation? A. Mr. Raymond came to see me at Mr. Chapman's suggestion, to talk over the details of a sale of the Modern Pen Company and A. A. Waterman & Co. to L. E. Waterman Company, I think it was.

4769 Q8. Have you given the substance of that conversation? A. No, I have not given any of the substance of it.

Q9. If you will give as much of it as you remember? A. My memory is mighty hazy but I will do the best I can for you. Mr. Raymond said that the details of a contract between these people for the sale to the L. E. Waterman Company were all arranged and adjusted except one, and that was the point that Mr. Chapman had called me into the matter to see if I could fix it; that was to determine what value was to be placed upon the plant and assets of the Modern Pen Company and A. A. Waterman & Co. That had not then been determined. I cannot give the conversation in detail. There was a talk of at least half an hour, I should say. The main drift of it was to know how we were to determine the value of those assets and Mr. Ray-

4770 mond's position was that it could not be determined without going through the form of taking an inventory and appraisal; and our conversation ended by his saying that he would send somebody, he mentioned the gentleman's name but I do not remember it, within the next day or two down to the office of the Modern Pen Compony and A. A. Waterman & Co., and take an inventory and appraisal of their assets. That is all I am sure of. I am impressed with the idea that he brought with him some written contracts which I read over but of that point I will not depose definitely because I have handled such a mass of contracts for those people that I cannot state certainly.

Q10. Did you see him again? A. Yes.

Q11. Can you fix that date? A. That was some time along in July, several weeks after the first interview. At that time I saw him again. He came to see me at my request and the purport of that talk was to find out why it was that the inventory and appraisal had not been made; Mr. Chapman advised me that it had not; and at that interview I am uncertain whether Mr. Raymond said that somebody was then down there taking the inventory or that he would be there within a day or two. They wanted information and a correct statement of what had been sold out of the assets or plant of that concern while negotiations had been pending. I promised to get it for him. I think I sent it to Mr. Chapman and the only scrap of paper that I can find is this, which I got from Mr. Chapman, and of which I sent a duplicate or copy or something to Mr. Raymond on or about the date of my last interview, July 22, 1909. That is all the paper that I can find in the office relating to this branch of the matters that I have had for those people. 4772

Mr. Bacon reads the paper referred to into the record, as follows:

Memo of machinery, etc.
Sold during 1908 and 1909.
About 12 rubber turning lathes.
About 4 buff spindles.
2 wet buff frames and carpet.
1 blower, 1 small motor, 1 old safe. 4773
Old shafting and hangers, etc.
1 desk, cabinet, etc.

July 22, 1909.

Underneath, in pencil, "Watson & Raymond."

Endorsed in pencil, "Modern Pen Company inventory, property sold."

Q12. All of this pencil is in your handwriting? A. Yes.

Q13. In either of these interviews was anything said about the trade name A. A. Waterman & Co.? A. That was a part of what they were buying, he told me; they were buying out the

4774 Modern Pen Company and all that they had; and A. A. Waterman & Company and all that it had.

Q14. Did they say anything specially about the name? A. I could not answer that.

Mr. Watson: I move to strike out all the testimony of this witness as incompetent and immaterial to any issue in this case, and subject to the determination of this matter I will cross-examine.

*CROSS-EXAMINATION by Mr. Raymond:*

4775 XQ15. Didn't I mention to you something about a draft contract that had been made? A. Yes, I think you had one. I am not absolutely certain of that, but I think you had one with you, which I read.

XQ16. Or Mr. Chapman had it with him? A. One or the other.

XQ17. Do you remember the names of the parties that were in the draft contract? A. Yes, I remember what the talk was. I don't exactly remember anything that was in the contract specifically.

XQ18. Do you remember distinctly that there was a draft contract? A. I say my impression is that there was a draft contract there, that either Mr. Raymond or Mr. Chapman produced.

4776 XQ19. Was not the only talk that we had about the party that was purchasing these assets, Aiken-Lambert? A. No, Aiken-Lambert's name was not mentioned to me. I never heard of it until I heard it from Colonel Bacon the other day. It was L. E. Waterman Company my talk was.

XQ20. You had this draft contract? A. I think we did. I am not sure about that; I am not certain that there was a draft contract.

XQ21. Do you think that you would recognize the draft contract? A. No, I do not. I cannot recall a solitary thing that was in it. If I could see the very paper that I saw I would not be able to recognize it now.

XQ22. Who told you that L. E. Waterman Company was buying or proposing to buy the property? A. Both Mr. Chapman and Mr. Raymond.

XQ23. Do you remember Mr. Raymond? A. I think you are the man but I am not quite sure I took you for him when you came in.

XQ24. You are sure I spoke about L. E. Waterman? A. Yes, I am absolutely certain about that. That is the only thing I was talking about.

XQ25. But you are also sure, quite positive, that there was a draft contract? A. I am reasonably certain of it but not absolutely certain. I would not swear to it. I have handled such a mass of these contracts for these people that I am all mixed 4778
up as to what they were, but I think there was a draft contract there.

XQ26. Wasn't it Mr. Chapman that told you about L. E. Waterman buying the property? A. Yes, and you did too.

XQ27. You are sure about Mr. Chapman? A. Yes, I am sure about Mr. Chapman and you too, both, absolutely.

XQ28. Did you go over that draft contract at all? A. If there was a draft contract there, and I think there was, I did nothing but just read it through. I made no criticisms of the contract. Mr. Chapman had sent for me particularly to see if I could not get this point of the valuation of those assets to a head. He had spoken to me about it two or three times before and that is why I was in it. I had nothing to do about the pre- 4779
paration of any contract, nothing whatever.

XQ29. Did you ever have any written correspondence with me about this? A. I cannot find any in the office. My first impression was that I had, but I cannot find anything in the office to confirm my recollection, so the only answer is just what I have told you now. I thought I had written you two or three letters; I think I told Colonel Bacon so the other day, but I cannot find any evidence that I did in the office.

Deposition closed.

Signature waived.

4780

WARD D. WILLIAMS, a witness called on behalf of the defendant, being duly sworn, testified as follows:

*Direct-examination by Mr. Bacon:*

Q1. Your name, residence and business? A. Ward D. Williams; 1238 Pacific Street, Brooklyn, attorney.

Q2. How long have you been an attorney? A. About nine years, I think.

Q3. Did you represent A. A. Waterman & Co. and the Modern Pen Co. in some matters? A. I did.

Q4. Were you called in with reference to the sale of their assets during the years 1907, 1908 or 1909? A. Yes.

4781

Q5. With whom did you have your conversation? A. With W. L. Chapman and Mr. Watson.

Q6. This gentleman here? A. This gentleman here.

Q7. About when was it? A. To the best of my recollection it was December and January, 1907 and 1908.

Q8. What was that conversation? A. Those conversations were with reference to a proposed contract between the Modern Pen Company and some others, I have forgotten; I think it was Frazer & Geyer Company and A. A. Waterman & Co. and some company that Mr. Watson represented.

Q9. Did he tell you whom he represented? A. As I remember it at the time he said that he represented the Watermans.

Q10. Will you give us that conversation as nearly as you

4782

can, or the different conversations? A. The conversation chiefly was about the form of the contract to be entered into. There were points of difference between the parties. One was with reference to disposing of the stock on hand; and the other was a question as to the guaranteeing of the patents by Mr. W. L. Chapman.

Q11. Had there been any draft contracts submitted by Mr. Watson? A. There was a draft of the contract submitted which I was informed by Mr. Chapman was submitted by Mr. Watson.

Q12. What was said, if anything, about the Waterman name? A. I cannot give the exact conversation it is so long ago.

Q13. The substance of it? A. The substance of the conversation as near as I can remember it was that Mr. Watson's client wished to purchase this business and get them out of the field; that is as near as I can remember the negotiations, the subject of it.

Q14. Get whom out of the field—the Modern Pen Company or A. A. Waterman & Co.? A. If I remember, A. A. Waterman & Co., the Modern Pen Co. and the Frazer & Geyer Co.

Q15. Did they say anything about getting control of the name Waterman? A. I don't remember as it was exactly in those terms, but as I recall it, that was part of the plan.

4784

*CROSS-EXAMINATION by Mr. Watson:*

XQ16. Where did you have this conversation with Mr. Watson? A. In your office at 10 Wall Street.

XQ17. Did you have a copy of the draft contract with you there? A. I did.

XQ18. And the discussion was entirely as to the terms of that contract, was it not? A. The terms of the contract and purchase and sale of the business and patents and disposing of the stock; a general conversation.

XQ19. You suggested some changes in the draft that was submitted? A. I did.

XQ20. Were the names of the parties in that contract? A. As I recall they were in the draft. 4785

XQ21. I will show you a copy; maybe it will refresh your recollection. The copy that you had you received from Mr. Chapman, didn't you? A. Yes.

XQ22. You never received any copy from me? A. No, you never sent me any papers at all.

XQ23. I show you Defendant's Exhibit A-58 and Defendant's Exhibit A-59, and ask you if either of those is a copy of the draft that you have referred to (handing witness the exhibits)? A. They look so different in print. I don't know that I could refresh my memory from these. I am inclined to believe that is a copy of it; I am not positive.

4786

XQ24. Look at the other? A. (The witness looks at Exhibit A-59.) I think that is a copy of the draft—the second draft.

XQ25. Did you have them both? A. I had both of them.

XQ26. It was Mr. Chapman that told you I represented the Watermans, was it not, not myself? A. No, in your office you said you represented Waterman.

XQ27. But the draft shows that I was representing somebody else in that transaction, does it not. Are not the parties' names mentioned in there who were to make that contract? A. Surely.

4787 XQ28. In both cases? A. In both cases. The first contract was Aiken-Lambert and the second was the Modern Pen Company, incorporated and organized under the laws of New York.

XQ29. It is quite probable that I might represent the Watermans and also Aiken-Lambert? A. It is quite possible.

XQ30. And the contracts show that I was representing those people at that time rather than the Watermans? A. On the face of them, yes.

XQ31. And those were the basis of our discussion? A. Yes.

XQ32. Was anybody present besides you and myself at this interview. A. As I recollect, you and Mr. Chapman and myself were the only ones present, except when Mr. Raymond came in once or twice, I believe, during the course of the interview. What part he took I will not say. That is where I met Mr.

4788 Raymond.

*RE-DIRECT EXAMINATION by Mr. Bacon:*

RDQ33. There was at that time no such corporation as the Modern Pen Company in New York, was there? A. I don't know that of my own knowledge. The records will show.

RDQ34. That was wholly different, of course, from the Modern Pen Company of West Virginia, which was an existing concern? A. The Modern Pen Company of West Virginia I understand was an existing concern. I understood that the Modern Pen Company was to be incorporated and take over that business.

RDQ35. And it was the Watermans that were doing it? A. So I understood from Mr. Watson.

RDQ36. And they insisted on getting the trade name Waterman? A. The contract says that. They insisted on the trade name, Frazer & Geyer Company and Modern Pen Company.

RDQ37. Did they lay emphasis on that fact? A. I don't recollect that there was any particular emphasis laid on that fact.

RDQ38. Did they say that they wanted to get the name Waterman out of the way so that nobody would have it but themselves? A. I don't know that that was said in so many words, but the impression I received was that they wanted to 4790
buy the three concerns.

*RE-CROSS EXAMINATION by Mr. Watson:*

RXQ39. As matter of fact was there any conversation about the name Waterman at all? A. Yes, of course there was, with reference to the A. A. Waterman Company that you were buying.

RXQ40. That question came up, did it? A. That question came up.

RXQ41. And was the reason given because there was confusion in the trade between the names? A. I don't recollect that there was any reason given for it, anything excepting that it was 4791
wanted.

RXQ42. Was not the discussion entirely as to the disposition of the stock of goods on hand? A. No.

RXQ43. Was not that what you came to see about, to arrange about the terms of the stock and when it was to be paid and when it was to be taken over? A. Not entirely. The entire contract was to be threshed out.

By Mr. Bacon:

RDQ44. Are you a patent lawyer? A. No.

4792 RDQ45. Do you know anything about patent law? A. Nothing.

Deposition closed.

Signature waived.

Mr. Bacon: I read in evidence from Mr. Watson's affidavit in the printed record, verified August 11th, 1910, the following:

"That at the outset of these negotiations, your deponent endeavored to arrange to purchase the defendant's manufacturing plant and machinery, but said Chapman advised your deponent that defendant and that Chapman desired to close out the whole pen business, everything relating to the pen business, and that
4793 defendant would not dispose of its factory and machinery alone; that your deponent then endeavored to arrange some basis for negotiations and drafted Exhibit R and Exhibit N-N (Exhibits A-58 and A-59), in an attempt to formulate some definite proposition; that both of these exhibits were drafted within a few days of each other and were merely tentative drafts for the purpose of negotiations; and neither one of these drafts were ever accepted by anybody."

Mr. Watson: I object unless you finish the sentence.

Mr. Bacon: You can read it.

Mr. Watson (reading):

"That these drafts were made in an attempt to arrive
4794 at some definite basis of negotiations. * * * The drafts and contracts, Exhibits R and N-N (Exhibit A-58 and Exhibit A-59), were prepared with a view to meet the suggestions of said Chapman that he and his brother Isaac E. Chapman and the defendant desired to dispose of their entire interest and property in connection with the pen business."

Mr. Bacon: I also read in evidence from the affidavit of Alexander S. Bacon, in order to show the attitude of the defendant at all times, verified August 10th, 1910, as follows:

"At no time has the defendant ever doubted the right of the complainant to trade-mark Ideal. That right was confirmed in Waterman vs. Shipman, 130 New York, 301, at page 312.

From the very beginning every precaution was taken not to imitate or simulate any trade name of the L. E. Waterman Company, and this new motion is based upon the alleged fact that the Modern Pen Company at one time sold to Mr. Saadi a trifling number of holders marked 'Royal Ideal Pen.' This sale was wholly inadvertent and without the knowledge of the principal officers of the defendant. The stamp 'Royal Ideal Pen' was a registered trade-mark of Mr. Saadi, but as soon as the objection was made the name was obliterated and no other sale has been made. No one regrets this circumstance more than the defendant. It was in direct violation of express orders and was merely an accident of inadvertence." 4795

Mr. Watson: I object to all this reading into the record of the affidavit as incompetent.

Mr. Bacon (reading): 4796

"The Modern Pen Company and A. A. Waterman & Co. always, in conversation, pleadings and in affidavits, admitted the validity of the trade-mark Ideal and have said that they have never knowingly violated it."

Mr. Watson: The same objection, and not in accordance with the proof in this action.

Mr. Bacon: I also read in evidence from the appellant's brief in the Appellate Division, Isaac E. Chapman and William L. Chapman vs. L. E. Waterman, appeal argued May 6th, 1910.

Mr. Watson: Objected to as incompetent.

Mr. Bacon: This is offered in evidence for the purpose of showing the attitude of the defendant towards the trade-mark Ideal from the beginning of this controversy. 4797

Mr. Watson: The Court's attention is called to the fact that all this was done after the defendant had infringed admittedly complainant's trade-mark and is self serving.

Mr. Bacon: I will state that at the time this brief was prepared the writer did not know of the infringement in the Saadi matter.

Mr. Watson: Objected to as immaterial.

Mr. Bacon (reading):

4798 "No one will question the right of the L. E. Waterman Company to the exclusive use of the word 'Ideal' as that is their trade-mark and has been sustained by the Court of Appeals in Waterman vs. Shipman, 130 New York, 301, but the word 'Ideal' is the only word that they have an exclusive right to. They have not an exclusive right to the word 'fountain' nor 'pen' nor 'Waterman.' The Court says, at page 312: 'Upon the facts found the plaintiffs were entitled to an injunction restraining the defendant from using the word Ideal as applied to fountain pens, and that was the only word to which the L. E. Waterman Company are entitled under 130 N. Y., 301. No case can be found where the exclusive use of Waterman or Waterman's has been confirmed to the L. E. Waterman Company and the fact that defendant has recently obtained a trade-mark for the word
4799 'Waterman's' does not give them any greater right than they had before."

Mr. Watson: Objected to as incompetent and self serving.

Mr. Bacon: Defendant closes. Notice is given that plaintiff's ten days in which to reply begins from today.

4800

**Defendant's Exhibit A.** 4801

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Complainant,

vs.

MODERN PEN COMPANY,
Defendant.

WHEREAS a preliminary injunction was issued herein by 4802
Judge Charles M. Hough, which injunction was appealed to the United States Circuit Court of Appeals for the Second Circuit and was modified and as modified, affirmed; and

WHEREAS the appeal book in that case contains 700 printed pages and as is believed contains substantially all of the facts that would be developed on the trial of this action,

NOW THEREFORE, in order to save further expenses and costs the defendant hereby consents that a permanent decree may be entered in conformity with the opinion of Judge Walter C. Noyes, of the said United States Circuit Court of Appeals, wherein it shall affirmatively appear that this defendant is entitled to the use of the trade name "A. A. Waterman & Co." and that the complainant is entitled to its trade name "Ideal" 4803
and to the use of the word "Waterman" in connection with the word "pen" or "fountain pen," when disassociated from any other limiting word.

The defendant admits that by inadvertence, it manufactured a small number of penholders marked "Royal Ideal Pen." Such manufacture was not known to the officers of the defendant; was wholly inadvertent and unintentional, and it is understood that most of these penholders were never sold to individual purchasers, but were restamped by Mr. John Saadi to whom they were sold by the defendant.

The defendant now offers to pay the plaintiff the sum of fifty dollars as liquidated damages on the sale of these penholders to said Saadi.

4804 In the event of this offer not being accepted, the defendant will ask the court that all costs and disbursements following this offer shall be imposed upon the complainant.

Dated, New York City, December 12, 1910.

ALEXANDER S. BACON,
Solicitor for Defendant.

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UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

4805 L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.

Messrs. Watson & Raymond,
Attorneys for Plaintiff.

Gentlemen:

Now that the taking of testimony has closed on both sides, I repeat the offer made early in the taking of your testimony and at the opening of the defendant's case:

4806 We hereby offer and consent to a permanent decree which shall be the same as the interlocutory decree already entered and further consent to pay you for damages on account of the use of the word "Ideal" on the penholders manufactured for Mr. Saadi of Washington, the sum of $75.

The defendant is to have the right to the use of the trade name "A. A. Waterman & Co." and the plaintiff to the use of the trade names "L. E. Waterman," "Ideal" and "Waterman" as applied to fountain pens.

In making this offer we do it without prejudice, and do not recognize that the defendant has ever knowingly or intentionally violated the trade-mark "Ideal," which the defendant has, since

long before the beginning of this litigation, and at all times, recognized as a valid trade-mark belonging to the plaintiff. 4807

In consenting to an injunction against the use of the word "Waterman" without any initials, we do this without recognizing your right to the use of that word standing alone, but make the offer in the interest of compromise and to avoid the labor and expense of printing the testimony and preparation for trial.

The defendant does not admit that it has ever used the word "Waterman" standing alone.

If this offer is not accepted, we shall ask the court that all the expenses and disbursements of this trial, both before and after this offer, and the preceding offers, shall be taxed against the plaintiff.

Dated, New York City, May 17, 1911.

4808

Yours &c.,

ALEXANDER S. BACON,

Attorney for Defendant.

---

## Defendant's Exhibit B.

*Decree of 1898.*

SUPREME COURT,

NEW YORK COUNTY.

4809

L. E. WATERMAN COMPANY,
Plaintiff,
against
ARTHUR A. WATERMAN and EDWARD L. GIBSON,
Defendants.

This action having come on to be tried by the Court at a Special Term at Part V thereof, in the Court House in the Borough of Manhattan, City of New York, County of New York,

4810 on the 7th day of March, 1898, and subsequent days, Hon. S. Alonzo Kellogg, Justice, presiding and the Court having rendered and filed its decision in writing dated the 7th day of April, 1898, directing judgment to be entered thereon, the decision being in the words following:

"This action having been tried before me at Special Term, Part V, on the seventh day of March, 1898, and subsequent days, and due deliberation having been had, I now hereby make and file my decision in writing stating concisely the grounds upon which the issues have been decided.

"The plaintiff is a domestic corporation which, since 1887, has been engaged in the manufacture and sale of fountain pens, with offices in the City of New York and Boston. For several years before 1887 Lewis E. Waterman, the inventor and patentee
4811 of such fountain pens, was engaged in their manufacture and sale and in 1887 he transferred to the plaintiff the said business, and he has since continued as the plaintiff's president and general manager. During all of this time these fountain pens were stamped 'Waterman's Ideal Fountain Pens, N. Y.' and sometimes 'Waterman's Fountain Pen, N. Y.,' and during all of this time such fountain pens were known to the trade and to customers and to purchasers at retail as 'Waterman's Pens,' or as 'Waterman's Fountain Pens,' and during such time they have been so advertised by the said Lewis E. Waterman and by the plaintiff and by customers of the said Lewis E. Waterman and of the plaintiff, who dispose of such pens at retail.

"That the plaintiff corporation, since 1887, has been known
4812 to the trade and to its customers and to purchasers of such pens as the 'Waterman Company' or the 'Waterman Pen Company,' and such names indicated to such persons the plaintiff company as the manufacturers and sellers of the said fountain pens.

"The plaintiff company, since 1895, has largely advertised the said pens under the name of 'Reliable' used in connection with the word 'Waterman,' and also since early in 1897, has largely advertised said pens by the name 'Standard' or 'Standard of the World' in connection with the word 'Waterman.'

"The plaintiff and the said Lewis E. Waterman, during said times, constructed said fountain pens with a hole of various

shapes in the gold pens at the point where the nibs begin and stamped on the gold pen the word 'Waterman' in a crescent shape just below this hole and adopted lettering on said gold pen and on the barrel of the fountain pen of a particular size, and in capital letters; and the word 'Waterman' was stamped on said gold pen and on said barrel in such lettering. 4813

"That the said Lewis E. Waterman invented and the plaintiff employed before the defendants went into business, a peculiar form of barrel and cap of a conical shape without any shoulder on the barrel which became known as the new style of the plaintiff's manufacture, and which form the defendants subesquently copied when they went into business.

"The plaintiff and the said L. E. Waterman have largely advertised the said fountain pens and they became well and favorably known to the trade and world and are well made and operative fountain pens. That plaintiff guarantees its said fountain pens and agrees to repair them if defective, and has done so during all of its existence as also did the said Lewis E. Waterman prior to the organization of the plaintiff. 4814

"The defendant, Arthur A. Waterman, for some five years prior to February, 1897, was an employee of the plaintiff, and while in its employ formed the intention of going into business for himself in the manufacture and sale of fountain pens. That he left the employ of the plaintiff in February, 1897, and subsequently in May, 1897, went into business and copartnership with the defendant, Edward L. Gibson, in the manufacture and sale of fountain pens. The defendants adopted the name 'A. A. Waterman Pen Company,' although they were not a corporation. That the use of said name has caused much confusion in the trade, and has led purchasers of fountain pens and the trade to believe that the fountain pens manufactured and sold by the defendants are the products of the plaintiff. 4815

"That the defendants advertised styles of their fountain pens under the letters 'A' or 'A. A.' and marked the gold pen on their fountain pens with the letters 'A' or 'A. A.' in connection with the word 'Waterman' stamped in a crescent form thereon in a similar manner to plaintiff's gold pens, and stamped the letters 'A. A.' in connection with the word 'Waterman' on the barrel of said pens, and the defendants used a hole in the said gold pens

4816 similar to that used by the plaintiff and employed similar lettering and capital letters in the stamping of their gold pens and of the holders thereof. It also put upon the market fountain pens of similar shapes and sizes, and with similar gold mounting to those manufactured by the plaintiff.

"That these acts of the defendant have caused the trade and purchasers of fountain pens to believe that the fountain pens of the defendants were those manufactured by the plaintiff and the letters 'A' and 'AA' are misleading, being not only the initials of the name of the defendant Waterman, but also letters of the alphabet and purchasers and the trade generally have been led to believe that the pens sold by defendant were 'A. Waterman Pen,' namely, a fountain pen manufactured by the plaintiff, whose pens have been well known as 'Waterman Pens.'

4817 "That furthermore, the defendants, notwithstanding the prior use by the plaintiff of the words 'Reliable and Standard' in connection with the word 'Waterman,' advertised their fountain pens as 'Reliable' and 'Standard' fountain pens in connection with the word 'Waterman,' and also marked fountain pens manufactured by them with the words 'Reliable' or 'Standard' in connection with the word 'Waterman,' or in connection with the words 'A. A. Waterman,' and that the use by the defendant of these names 'Reliable' and 'Standard' in connection with the word 'Waterman' have produced confusion in the trade and among purchasers of fountain pens, and have led such persons to believe that such fountain pens are new styles of fountain pens manufactured by the plaintiff.

4818 "That the pens manufactured by the defendants are in many cases faulty in construction and either flow too much or will not flow at all, and often break in the middle and otherwise get out of order.

"That the defendants furthermore have, in several instances, imitated the plaintiff's circulars and advertisements, and defendants' circulars in some instances contain misleading statements which tend to make the trade and purchasers of defendants' pens believe that the fountain pens so advertised and so manufactured and sold by the defendants are those manufactured and sold and advertised by the plaintiff.

"The plaintiff for many years has had an office at 157 Broadway, New York City. That the defendants, since they went into business, have opened offices and a store at 178 and 181 Broadway, near the plaintiff's place of business. That the plaintiff for several years had its office in Boston at 38 Bromfield Street, and a certain clerk therein. That the defendants, when they went into business, secured this office from the landlord thereof and secured the said clerk, and are now doing business in the former place of business of the plaintiff in the City of Boston. That the defendants advertise themselves as being the 'A. A. Waterman Pen Company of New York and Boston,' and on the boxes in which they place their fountain pens they advertise themselves as 'New York and Boston' without giving any street address. 4819 4820

"The adoption of said offices near the plaintiff's place of business by the defendants, and their advertising as aforesaid, causes, and has caused, the trade and customers who purchase fountain pens to believe that the A. A. Waterman Pen Comapny of New York and Boston is the plaintiff company, and well-known manufacturers of Waterman's fountain pens.

"That these acts of the defendants in so advertising and in so manufacturing and selling fountain pens and in employing said corporate name, have caused great confusion as to the identity of the said fountain pens. That since the defendants have commenced business a large number of fountain pens manufactured by them have been sent to the plaintiff company by purchasers thereof, in the belief that they were made by the plaintiff, and such customers have sent such pens for repair or exchange to the plaintiff and have corresponded with plaintiff about them. That letters come to the plaintiff not only in reference to defendants' business, but in reference to plaintiff's business, although addressed to the defendants under the said corporate name. That numerous of such pens of the defendants so returned to the plaintiff are broken or faulty in construction or will not work. 4821

"That these acts of the defendants damage the plaintiff's business and lead the trade and purchasers of fountain pens to believe that the plaintiffs are manufacturing a faulty and defective fountain pen, and are a great injury to plaintiff's reputation, and

4822 the said acts of the defendant deceive and tend to deceive and will tend to deceive the public into believing that the fountain pens manufactured by the defendants are those manufactured by the plaintiff, and the plaintiff has no adequate remedy at law.

"That these acts of the defendants were done by them with the intent that the public and the trade and purchasers of fountain pens should be led to believe that the fountain pens manufactured by the defendants were Waterman's pens or Waterman's fountain pens, as manufactured for many years by the plaintiff and its predecessor, Lewis E. Waterman, and with hope and expectation that by the use of the said corprate name and by the use of the word Waterman the defendants might be able to obtain a sale for their pens and to obtain an advantage from the name of 'Waterman Company,' and the
4823 name of 'Waterman' or 'Waterman's' which, for many years, have been well known to the trade as indicating the plaintiff company and its fountain pens.

"The plaintiff is entitled to judgment against the defendants and I direct judgment against them as follows:

"That the defendants, Arthur A. Waterman and Edward L. Gibson, and each of them, and their and each of their servants, employees, attorneys, agents, customers and all persons taking or holding under, from or through them, be and they hereby are, perpetually enjoined and restrained from—

"(1) Using the corporate name 'A. A. Waterman Pen Company,' or any corporate name containing the word 'Waterman'
4824 or from advertising the same or employing the same on fountain pens or in connection with fountain pens.

"(2) Using in connection with the business of making or selling fountain pens on such fountain pens, whether on the holder or the gold pen, or on labels, boxes, signs, letterheads, billheads, circulars or advertisements, or in any manner whatsoever, the word 'Waterman,' 'Waterman's' or 'Watermans' ' alone or the word 'Waterman,' 'Waterman's' or Watermans' ' (whether the same be or be not coupled with other names or initials) in such a collocation with the word pen or fountain pen (whether the same be or be not coupled with some further descriptive word or words) as to indicate that the fountain pens so made,

or sold, are a variety of Waterman's fountain pens. But defendants are not prohibited from indicating that fountain pens made by them are made or prepared or sold for or by Arthur A. Waterman & Company or A. A. Waterman & Company. 4825

"(3) From using the word 'Standard' or 'Reliable' in connection with the word 'Waterman' or 'Waterman's' whether with or without initials or other descriptive words upon their fountain pens or labels, boxes, signs, letterheads, billsheads, circulars or advertisements or in any other manner whatsoever. But the defendants are not prohibited from using the words 'Standard' or 'Reliable' alone in connection with fountain pens, provided that the word 'Waterman' or 'Waterman's' with or without initials, is not employed.

"(4) From imitating the plaintiff in its circulars or advertisements or from imitating the manner in which plaintiff dresses up or marks or letters its fountain pens, or from doing any other act in imitation of the plaintiff's business or methods which would make or tend to make the public or the trade or purchasers of fountain pens believe that the fountain pens manufactured by the defendants are those manufactured and sold by the plaintiff. 4826

"(5) From advertising any of defendants' fountain pens under the styles 'A' or 'A A' or from making said styles 'A' or 'A A' in connection with the word 'Waterman' upon defendants' fountain pens, either upon the gold pen or the holder thereof.

"That plaintiff is entitled to the costs of this action against the defendants." 4827

Now, on motion of Logan, Demond & Harby, attorneys for the plaintiff, it is

Ordered, adjudged and decreed as follows: That the defendants, Arthur A. Waterman and Edward L. Gibson and each of them and their and each of their servants, employees, attorneys, agents, customers and all persons taking or holding under, from or through them, be and they hereby are, perpetually enjoined and restrained from:

(1) Using the corporate name "A. A. Waterman Pen Company," or any corporate name containing the word "Waterman"

4828 or from advertising the same or employing the same on fountain pens or in connection with fountain pens.

(2) Using in connection with the business or making or selling fountain pens on such fountain pens, whether on the holder or the gold pen or on labels, boxes, signs, letterheads, billheads, circulars or advertisements, or in any manner whatsoever, the word "Waterman," "Waterman's" or "Watermans'" alone, or the word "Waterman," "Waterman's" or "Watermans" (whether the same be or be not coupled with other names or initials) in such a collocation with the word pen or fountain pen (whether the same be or be not coupled with some further descriptive word or words) as to indicate that the fountain pens so made or sold are a variety of Waterman's fountain pens. But
4829 defendants are not probibited from indicating that fountain pens made by them are made or prepared or sold for or by Arthur A. Waterman & Company or A. A. Waterman & Company.

(3) From using the word "Standard" or "Reliable" in connection with the word "Waterman" or "Waterman's" whether with or without initials or other descriptive words upon their fountain pens or labels, boxes, signs, letterheads, billheads, circulars or advertisements or in any other manner whatsoever. But the defendants are not prohibited from using the words "Standards" or "Reliable" alone in connection with fountain pens, provided that the word "Waterman" or "Waterman's" with or without initials is not employed.

4830 (4) From imitating the plaintiff in its circulars or advertisements or from imitating the manner in which plaintiff dresses up or marks or letters its fountain pens, or from doing any other act in imitation of the plaintiff's business or methods which would make or tend to make the public or the trade or purchasers of fountain pens believe that the fountain pens manufactured by the defendants are those manufactured and sold by the plaintiff.

(5) From advertising any of the defendants' fountain pens under the styles "A." or "A. A." or from making said styles "A." or "A. A." in connection with the word "Waterman," upon defendants' fountain pens, either upon the gold pen or the holder thereof.

It is further ordered, adjudged and decreed, that the plaintiff is entitled to the sum of Two hundred and ninety-three and 94/100 Dollars ($293.94/100) costs of this action, against the defendants. 4831

Dated, September 3rd, 1898.

Enter,

S. A. KELLOGG,
Jus. Sup. Ct.

Wm. Sohmer,
Clerk.

Copy received July 23, 1910, A. S. Bacon, Atty. for deft.

(Endorsed): U. S. Circuit Court, Southern District of N. Y.
Filed Aug. 25, 1910, John A. Shields, Clerk. 4832

4833

4834 **Defendant's Exhibit C.**

THE ROYAL IDEAL PEN CO. BROOKLYN, NEW YORK,

The Royal Ideal Pen

Sales Office #602-9th St. N. W. Washington, D. C.

Reg. in U. S. Patent Office No. 14975.

4835 (Endorsed): U. S. Circuit Court So. Dist. of New York. In Equity. L. E. Waterman Co. vs. Modern Pen Co. Defendant's Exhibit C. Dec. 29, 1910. A. M. Parkens, Notary Public, D. S. Modern Pen Co Received Nov. 27, 1909, A. M. P. M. 7 8 9 10 11 12 1 2 3 4 5 6.

4836

**Defendant's Exhibit D.** 4837

No. 14919.

UNITED STATES OF AMERICA,

DEPARTMENT OF THE INTERIOR,

Patent Office.

TO WIT: BE IT REMEMBERED, That on the twentieth day of May, Anno Domini 1909, John Saadi, of Brooklyn, New York and Washington, District of Columbia, deposited in this office for registration a label of which the following is the title: "Royal Ideal Pen," (for fountain pens) the right whereof he claims as sole proprietor, in conformity with the law of the United States entitled "An act to amend the law relating to Patents, Trade-Marks and Copyrights," approved June 18, 1874. 4838

IN TESTIMONY WHEREOF I have caused the seal of the United States Patent Office to be hereunto affixed this twenty-second day of June, 1909, and of the Independence of the United States the one hundred and thirty-third.

(Seal)

Given under my hand at Washington, D. C.

The foregoing is a copy of the record and attached hereto is a copy of said label.

C. C. BILLINGS,
Acting Commissioner of Patents.

ROYAL IDEAL PEN 4839

FOUNTAIN PEN 14 K. GOLD

4840 **Defendant's Exhibt E.**

No. 14975.

UNITED STATES OF AMERICA,

DEPARTMENT OF THE INTERIOR,

Patent Office.

TO WIT: BE IT REMEMBERED, That on the Seventeenth day of June, Anno Domini 1909, John Saadi, of Washington, District of Columbia, deposited in this office for registration a label, of which the following is the title: "Royal Ideal Pen," (for fountain pens) the right whereof he claims as sole proprietor, in conformity with the law of the United States entitled "An act
4841 to amend the law relating to Paents, Trade-Marks, and Copyrights," approved June 18, 1874.

IN TESTIMONY WHEREOF I have caused the seal of the United States Patent Office to be hereunto affixed this twenty-ninth day of June, 1909 and of the Independence of the United States the one hundred and thirty-third.

(Seal)

Given under my hand at Washington, D. C.

The foregoing is a copy of the record, and attached hereto is a copy of said label.

C. C. BILLINGS,
Acting Commissioner of Patents.

4842 ROYAL IDEAL PEN

FOUNTAIN PEN 14 K. GOLD

## Defendant's Exhibit F.

4843

Lincoln Fountain pen box (containing Exhibit G) which will be exhibited to the Court.

---

## Defendant's Exhibits A and B of April 8, 1910.

Lancaster pen points which will be exhibited to the Court.

4844

4845

4846

## Defendant's Exhibit G.

Defendant's Exhibit G, enclosed in Defendant's Exhibit F.

Please read these Hints

# HINTS TO USERS

See the Makers' Guarantee below

Of Fountain Pens made and guaranteed by

A. A. WATERMAN & CO., New York

**OPENING AND FILLING** This pen has a screw joint unscrewing at the point marked J in the illustration.

**CLOSING THE PEN** The threads on the barrel should be wiped dry with tissue paper or clean cloth, otherwise a few drops may exude at the joint on closing. Screw the joint tight and keep it free from grit or dirt.

**USE BLUISH FLUID INK** Fluid inks give best results. The blacker the first color of the ink, or the more it contains "copying" elements, the sooner the pen clogs. Use ink from a bottle kept *closed constantly* from air and dust; a combination cork and dropper is very convenient.

**CLEANING** No ink is free from some trace of sediment, and the best results are obtained by those who frequently rinse the reservoir and force water through the section so as to clean the feed and pen.

**DON'T TAKE APART** *Do not remove the feed bar, nor the gold pen from the holder.* It is difficult to replace both with the proper adjustment, and handling the gold pen changes its action.

**CAUTION** The point should never be down except when the pen is on the paper for writing; therefore exercise care at all other times, especially in removing or putting on the cap, or in handling the pen in any way.

**ABOUT CAPS** Give a slight twist to the right in taking off or putting on the cap; don't jerk it. Keep the little hole in the cap open if the pen is carried in the pocket. Otherwise keep it closed (with a little wax).

**BAD RESULTS** Disregarding the foregoing suggestions causes untidy results. In cleaning inky surfaces use soft tissue paper or a clean cloth, and wipe out *inside of cap thoroughly.*

**FIRST USE** The pen should write instantly on contact with paper, though if new it will be necessary to wet the pen and feed at first, or to urge the ink into the feed-bar by jarring the pen slightly. The acid in the ink will correct any irregular flow caused at first by accidental traces of oil on the feed.

**PECULIAR TRAITS** When the pen is nearly empty it may flow more freely, as the heat of the hand causes rapid expansion of increased air in the reservoir. To insure against blotting re-fill it at once. If the cap is left off so that the ink dries on the pen, moisten the pen to make it start quickly. After filling, sometimes a bit of shut-in air drives out a drop of ink. Draw off the excess ink by touching the pen to a blotter.

**THE MAKERS' GUARANTEE** We guarantee any pen bearing our name. This guarantee, to be made good by the dealer through whom the pen is obtained, is against *actual defects or faults in construction only.* If any dealer fails to respect this guarantee, we request that the facts be reported.

MODERN PEN CO

## Defendant's Exhibit A, Apl. 10, 1911.

4849

W. R. Ramsey,
Druggist.

Mulberry, Ind., March 6th, 1911.

A. A. Waterman & Co.
New York, N. Y.

Dear Sir:

Last week L. E. Waterman's representative was here and informed me that they had an injunction against A. A. Waterman. I have 1-1/6 doz. A. A. Waterman pens on hand and thought it best to write you and have them exchanged and save further trouble following is list of pens on hands.

4850

| | | | |
|---|---|---|---|
| 2 only | #703 | @ | $3.00 |
| 1 " | #603 | @ | $2.50 |
| 6 " | #503 | @ | $2.00 |
| 5 " | #303 | @ | $1.50 |

Yours truly,
W. R. RAMSEY.

---

## Defendant's Exhibit B, Apl. 10, 1911.

The following is an extract from an order of the United States Circuit Court for the Southern District of New York, entered on the 10th day of December, 1910, entered pursuant to a mandate of the United States Circuit Court of Appeals for the Second Circuit:

4851

* * * * * *

Present: Hon. Charles M. Hough, United States District Judge.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.

This cause having come on to be heard upon the motion by plaintiff for a preliminary injunction, and on reading and filing

4852 the notices of motion for a preliminary injunction herein and admission of service thereof, and the affidavits on behalf of the plaintiff annexed thereto, and on reading and filing affidavits on behalf of the defendant, and Alexander S. Bacon, Esq., counsel for the defendant, and Samuel S. Watson, Esq., counsel for the plaintiff, having been heard, and it appearing that this Court has jurisdiction over the parties and the subject-matter and upon full consideration of the facts presented it appearing that the plaintiff is a corporation under the laws of the State of New York, and is the owner of the trade-mark "Waterman's Ideal Fountain Pen, N. Y." for fountain pens and of the trade-mark "Ideal" for fountain pens, and that the same have been duly registered by the plaintiff in the United States Patent Office and
4853 that the defendant is a corporation under the laws of the State of West Virginia, and has infringed plaintiff's said trade-marks, and it also appearing that the defendant is guilty of unfair competition in trade with the plaintiff by using the name "Waterman" in connection with the marking, advertising and selling of fountain pens and parts hereof;

Now, therefore, it is hereby

Ordered, adjudged and decreed that a writ of injunction be issued pursuant to the prayer of the bill of complaint herein, strictly commanding and enjoining the defendant, Modern Pen Company, and its officers, servants, agents, attorneys and workmen, and each and every one of them, under the pains and penalties which may fall upon them, and each of them, in case of disobedience, that they forthwith and until the further order,
4854 judgment or decree of this court, desist from:

1. Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale or advertising any fountain pens of other manufacture than that of the plaintiff under the name of Waterman or Waterman's or Waterman Pens or Waterman's Pens or Waterman Fountain Pens or Waterman's Fountain Pens or Ideal Pens, or any mark or name in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or deceive purchasers or which would indicate that the fountain pens so sold, represented or advertised are fountain pens of plaintiff's manufacture.

2. Infringing the plaintiff's trade-mark "Waterman's Ideal Fountain Pen, N. Y." or infringing the plaintiff's trade-mark "Ideal" and from manufacturing or selling fountain pens (other than fountain pens of plaintiff's manufacture) having the said trade-marks or either of them, or any simulation or colorable imitation thereof, on such fountain pens, whether on the holder or on the gold pen, or on labels, boxes, signs, letterheads, bill-heads, circulars or advertisements accompanying or used in connection with the making or selling of such fountain pens, or in any manner whatsoever. 4855

Dated, New York, N. Y., Aug. 27, 1910.

C. M. HOUGH,
United States District Judge.

(Signed) C. M. HOUGH, 4856
United States District Judge.

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**Defendant's Exhibit A of Mar. 27, 1911.**

H. C. Bartlett, Jr.,
Special Western Representative.

MODERN PEN COMPANY
22 Thames Street
New York

4857

Modern
Self Filling
and
Middle Joint
Fountain Pens

Sole Selling Agent
for A. A. WATERMAN & Co.

4858

# Defendant's Exhibit B of Mar. 27, 1911.

Rating *See Up.* Credit *M N S* Shipped *Mar. 21, 1910*

Order or Voucher No. *1968* *Hely* *3/12* *S* 1910

Ordered by Received from, Delivered to

*Buhrman Bros.*

*New Castle Ont*

Ship *O N C* by *Expss loll* Terms *1/260-92* 90

Mention Number of Modern Pens on Hand. See below

| Fountain Pens as Below | | | | This Space For Figuring | | | | Asssortment of Nibs and Points | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | Short Nibs Only | | | | Reg'r Nibs. For Short Nibs write S after quantity | | | |
| How Many Pens | Size and Style Nos. | List Price Per Pen | Discount According to Size of Stock | | | | | Manifold | Stenog'r | Stub | Ob Stub | Ex. Fine | Fine | Medium | Coarse |
| 2 | 30 | 250 | 40 | 5 | | | | | 1/2 Black | | | | | 2 | |
| 2 | 40 | 300 | 40 | 6 | | | | | | | | | | 2 | |
| | | | | | | | | | 1/2 Mat | | | | | | |
| 1 | 50 | 350 | 40 | 3.50 | | | | | | | | | | 1 | |
| | | | | 14.50 | 8.70 | | | | | | | | | | |
| 2 | 503 | 200 | 50 | | | | | | | | Imprint all | | | 2 | |
| | | | | 4 | | | | | | | A. A. W. & Co. | | | | |
| 3 | 703 | 300 | 50 | 9 | | | | | | | | | | 3 | |
| 2 | 603 | 250 | 50 | 5 | | | | | | | | | | 2 | |
| 3 | 303 | 150 | 50 | 4.50 | | | | | | | | | | 3 | |
| 3 | A | 100 | 50 | 3 | 12.75 | | | | | | | | | 3 | |
| | | | | 25.50 | | | | | | | | | | | |
| 1 | 3 doz. Cond Mat B Clps Oak Tray | | | | 1.00 | | | | | | | | | | |

*Mat 100* *Hed*

*This is a new firm but good so bank says. Have nice stock.*

4859

4860

N. B.—For the various finishes of holders use distinct Nos. thus, 40, 40 Ch., or 40 M. If no mention of NIBS and POINTS, the Nibs will be half regular and half short; and the POINTS HALF MED., Quarter FINE and Quarter COARSE and BROAD (or Stub).

This Order Fills the Stock to *New Acct* Modern Pens.

THE MODERN PEN CO., 22 Thames St., New York
Sellling Agent for
A. A. Waterman & Co.

*Buhrman Bros.* Per *Bartlett*

Use the other side for any special condition; but separate sheets for all else.

*Requested Wilber report 2/5/10* 27

[Stamped on back]

Modern Pen Co,, Received Mar 15, 1910. A. M., P. M. 7-8-9-10-11-12-1-2-3-4-5-6.
H. W. G., A. H. H., E. K., Order, Credit, Repair, Billing, Exchange, Cash, B. K.

**Defendant's Exhibit C of March 27.** 4861

Letterhead of Henry R. Brink.

Holland, Mich., Dec. 15, 1910.

Modern Pen Co.,
125 Greenwich St., New York.

Gentlemen:

We are informed that the pens your agent sold us last August are being sold in New York for 85 cents. We are also informed that the name Waterman in the manufacturing and selling of fountain pens is owned and controlled by the L. E. Waterman Co. and any other concern in using their name is liable to 4862
get in trouble. We therefore believe the only safe way is to return the pens as we are not allowed to sell them under the name of Waterman as stamped on pens. Please let us know by return mail what we shall do.

Respectfully yours,

H. R. BRINK.

---

**Defendant's Exhibit D of March 27, 1911.**

Dec. 19th, 1910.

4863

Mr. H. R. Brink,
Holland, Mich.

Dear Sir:

Your letter of the 15th instant received and you were misinformed when told that our pens are being sold in New York for 85¢. We have the one price on our goods, and all the dealers are selling them at the list prices, and as far as we know, we are sure that none of our dealers in New York are cutting prices, as we would hear of this immediately if it was done.

In regard to the name "Waterman," the L. E. Waterman Company have sued us to prevent our using the name A. A. Water-

4864 man & Company, and it was carried through to the United States Circuit Court of Appeals for this district, which is the highest court to which this case can be carried, and it is decided distinctly that we have the right to the use of the name A. A. Waterman & Company, and the decision was rendered only last week. In selling our pens, or advertising same, you must be sure to use the full name "A. A. Waterman & Company," as the L. E. Waterman Co. have the use of the name without any initials.

The L. E. Waterman Co. have tried all they knew how to bother us with our customers, but as the case has now been decided in our favor, we look for no more of these tactics from them.

4865 Yours truly,
THE MODERN PEN COMPANY,
Hobart W. Geyer,
Treasurer.

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**Defendant's Exhibit E, March 27, 1911.**

Mch. 31, 1909.

H. C. Bartlett, Jr.,
C/o Marion Hotel,
Little Rock, Ark.

4866 Dear Sir:

Your letter of the 28th inst. received, as well your several letters with orders which were received yesterday.

Before the receipt of your orders we had received a letter from Messrs. Thompson & Huskins, De Queen, Ark., stating that they understood they were purchasing the Waterman's Ideal pen and so countermanded their order. We have written them quite a lengthy letter explaining the situation and hope that they will let us ship the goods to them. We gave you considerable leeway on special terms where you found it necessary and do not care to sell goods on payments due sight or nine months

hence. It has been our experience that where customers buy on 4867
sixty days as a general thing it is from three to four months before they pay their account, although two or three of the bills which you sold on sixty days have been discounted, the customers sending a check almost by return mail after receipt of the goods, so that while you gave them a long time they really did not wish it.

We have not seen any of the Parker Pen Co.'s contracts but from the general reports which we get as to their dealings we understand that there is some kind of a "joker" in the contract. Their customers buy with the understanding that they can return the goods but when they try to return them they find that there is some clause which prevents their so doing. From the reports we get the Parker Pen Co. has more dealers sore on them than 4868
any concern in the fountain pen business.

We do not know what jobbers are selling our goods in your territory. The only ones we know of who would be liable to touch it, that are handling our goods, are Messrs. Montag Bros., Atlanta, Ga., Belkna Hdwe & Mfg. Co., Louisville, Ky. and possibly Daniel Stewart Co., Indianapolis, Ind. We never told you that we did not sell to jobbers and do not know where you got this impression. We have no knowledge of what territory these jobbers cover.

In one of our previous letters we wrote you that you might run up against goods made by A. A. Waterman & Co. of Chicago, and as you state that some of the dealers are buying goods at 50% discount, it is possible that they are selling at this dis- 4869
count, although we have not heard of their making any such prices on the Modern line. However, their goods are nothing like as good quality as ours and we do not see that we can make better discounts in the southwest, than we do all through our trade in the eastern part of the country. The jobbers who are handling our line certainly are not selling the Modern at 50% discount as if they did they would have nothing left for their own profit. The terms we have quoted you are the same terms that we give to all of our trade as we do not believe in giving part of our trade any better terms than another part.

We are willing to do everything we can to help you sell our goods in your territory and we have put the list prices on

4870 the Lincoln pens much lower for the same size pens than the Chicago house is putting out their Lincoln line.

We have no leather covers for order books but are sending you a board cover same as our salesmen use.

We appreciate the business you are sending us and trust you will be able to increase it right along.

With best wishes, we remain,

Yours truly,

THE MODERN PEN CO.,
Hobart W. Geyer, Ass't Treas.

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4871 **Defendant's Exhibit G, March 27, 1911.**

Letterhead of the Great Northern Hotel

Hot Springs, Ark., 4/4/1909.

The Modern Pen Co.

Gents. In reply to your letter of the 31st will say that most all the St. Louis Jobbing Houses are selling your pens at 50% even Butler Bros. of St. Louis. This makes it hard for me. I will secure a copy of Parker's contract and send it to you. I would like to know if the A. A. Waterman Pen Co. of Chicago, Ill., are the same as A. A. Waterman, New York. Please advise me fully about this matter so I can explain to the trade
4872 also what relation or connection has A. A. Waterman with L. E. Waterman full information along these lines would be of great value to me in securing orders.

I note what you say about long time; also 60 days and that several of my customers have remitted on receipt of goods. I will say you will find all my customers prompt pay I give them long time because they say they can get the same from other people. I note Thompson & Huskins of DeQueen, Ark., say that they understood that they were getting the Ideal pen. Now this is not true for we talked that all over and they bought our goods; also kept me from selling another firm that wanted our line. I am writing them today relative to this matter. I hope

you have received instructions from them to ship. I have received the cover O. K. and ask that you accept my thanks for same. 4873

I will ask you to please send me statement of my act. to Springfield, Mo. care the Metropolitan Hotel. I will spend next Sunday the 11th in Springfield, Mo.

Thanking you in advance for your reply, I remain

Yours truly,

H. C. BARTLETT, JR.

Please advise what the costs of repairing old pens will be, the one you have charged to my act.

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4874

**Defendant's Exhibit F, March 27, 1911.**

April 7, 1909.

Mr. H. C. Bartlett,
C/o Metropolitan Hotel,
Springfield, Mo.

Dear Sir:

Your several letters with orders received, and we are pleased to note that you are able to send us orders regularly.

We are sorry to inform you, however, that on the 5th before the receipt of your orders, we received telegrams from Mr. A. C. Jennins and Messrs. J. E. Jackson & Co., of Hot Springs, Ark., to cancel their orders. We do not understand this except that it is possible Mr. A. A. Waterman is stopping at Hot Springs on account of his health and he may have found out that you had secured these orders and got the people to cancel them. 4875

You request us to let you know the full particulars of our standing with A. A. Waterman & Co. of Chicago, and also the relationship of A. A. Waterman & Co. of Chicago and the L. E. Waterman Co. We are pleased to do this as fully as it can be done in a letter. For some years Mr. A. A. Waterman

4876 was a salesman for the L. E. Waterman Co.; he left their employ some dozen years ago to go into business for himself. As far as the writer knows, he is no relation to any of the L. E. Waterman people. Some seven or eight years ago A. A. Waterman formed a copartnership with Mr. Frazer and the writer, who were conducting a fountain pen business under the name of the Frazer & Geyer Co., a New York Corporation, and we started the firm of A. A. Waterman & Co., the two concerns doing business together. In June, 1905, the Frazer & Geyer Co. and A. A. Waterman & Co. were consolidated under the name Modern Pen Co., Mr. Waterman at that time making a contract with the Modern Pen Co. whereby he had the option of leaving us at the end of a year or so and taking up the Western
4877 part of the country as his territory, he to pay us several thousand dollars if he took advantage of this option. He decided to take advantage of said option and took up the Western territory but he never paid us a dollar to fulfill his part of the contract. While we have not been active in his field, we have sold regularly to what trade came our way and Mr. Waterman tried to stop us by attaching some of the accounts owed us by customers in the West, but we fought these out in the Courts both in Minnesota and in Washington and won out in all cases.

Until we got the information from you we did not know that the Chicago concern were selling their goods at 50% discount. We are not surprised, however, that they have to do this as the quality of their goods is very poor. They do not manufacture themselves, buying their goods wherever they can get
4878 them and at the cheapest prices they can get them made. We have judgment against Mr. Waterman personally for some thirty or forty thousand dollars but we are unable to collect a dollar on them.

The firm of A. A. Waterman & Co. of New York consists of Mr. I. E. Chapman and Mr. Wm. L. Chapman, the President and Treasurer of the Modern Pen. Co.

The firm of A. A. Waterman & Co. of Chicago has no connection whatever with this Company or firm.

We have heard nothing further from Thompson & Haskins since writing you.

Enclosed we hand you statement of your account, showing a balance to your credit of $22.47. We would have enclosed a check to cover this but you wrote us not to remit until you sent us definite instructions to that effect. 4879

Referring to the lot of pens we have of yours, we find that on these repairs there are five new gold pens needed, two caps and five sacs, besides general cleaning up and polishing. We will do this work for you at actual cost, which will be $2.50, in case you wish us to do it.

Trusting the information given herein will cover your requirements in explaining the situation to the trade, we remain

Yours truly,

THE MODERN PEN CO.,

Hobart W. Geyer, Ass't Treas. 4880

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**Defendant's Exhibit H, March 27, 1911.**

Letterhead of the Oriental Hotel.

Dallas, Texas, 5/15 1910.

The Modern Pen Co.

Gent:

I see from the Jewelers Circular Weekly that L. E. Waterman & Co. has started an action against you and asked for injunction & damage $250,000. Now I would like to know what about this. I don't think they should say a word for there me tell it that our pens are no good and do any thing they can to keep us from getting business but the more they say the more we sell. I always tell the dealers L. E. has just as good a pen as we have and that they are nice people to do business with, and that we are in no way connected with them. They are sending out letters to the trade stating we have no right to sell our pens. I hope you win out in the suit. I will expect to hear from you Sunday at Oklahoma City, Okla. care Threadgill Hotel. 4881

Wishing you success, I remain,

Yours truly,

H. C. BARTLETT, Jr.

4882 **Defendant's Exhibit I, March 27, 1911.**

May 19th, 1910.

Mr. H. C. Bartlett, Jr.,
Oklahoma City, Okla.

Dear Sir:

Your letter of the 15th instant with enclosures received, and we are sorry that you have found trade so poor; from the business you got in Oklahoma last year, we hope that you will do well there again at this time.

The F. Levy Stationery Co. is not rated in Duns so we are getting a special report on them; if the report is all right, we will ship their goods without delay dating the bill as July 1st.

4883 In regard to the suit of the L. E. Waterman Co. against ourselves, our attorney has telephoned us that their motion has been denied. About two months ago we started a suit against the L. E. Waterman Co. to prevent them from bringing suits such as they brought in Cleveland and Washington against dealers who were handling our goods, but in this complaint they did not mention us at all but got judgment by default and in their decree put our name in so that they enjoined the customer from selling goods made by us. This case is being fought out and in the meantime the L. E. Waterman Co. brought a suit in the U. S. Circuit Court asking an injunction against the Modern Pen Co. selling goods made by the A. A. Waterman & Co., this is the suit that has just been decided in our favor. We

4884 have no doubt but what we will win our other suit also but it may be some months before it is finally settled.

Your order from J. M. Goldberg calls for emblems which you wish stamped 14 kt. Our emblem bands are not made of 14 kt. the bands being gold filled of 1/10 18 kt. plate, but the emblem is solid gold. If you want a 14 kt. band as well as emblem we would have to make the pens list at $8.00 or $9.00 instead of at $6.00. You might take this up with Mr. Goldberg and see if he will take the pens as they are or if he will take them with the full 14 kt. band at the higher price.

Yours truly,
THE MODERN PEN COMPANY,
Hobart W. Geyer,
Ass't. Treasurer.

**Defendant's Exhibit J, March 27, 1911.** 4885

Aug. 6, 1909.

Mr. H. C. Bartlett, Jr.,
C/o The Brady,
Tulsa, Okla.

Dear Sir:

Your letter of the 2nd inst. received, also the orders contained therein.

It appears that A. A. Waterman & Co. of Chicago are telling the trade the exact opposite of the facts. We manufacture our pens, both gold pens and holders complete right here on our premises, whereas the Chicago concern have their holders made in different places and their gold pens wherever they can get them. 4886
At present, a man named Williamson, of Janesville, Wis. is making their gold pens. We do not know who makes their holders. Mr. A. A. Waterman is no longer connected with the Chicago house except in the capacity of salesman, he having disposed of his interest in the concern entirely. We understand Mr. Waterman closed out the last of his stock in the Chicago concern something like three or four months ago. While we did not get this direct from him we did get it from a party very close to him to whom he wrote this information.

We cannot get Nos. 5706, 5806 and 5606 in Middle Joints but can furnish them in end joints, if you wish. The list on them would be the same as the Self-filler.

Enclosed we hand you your commission sheets for July, and 4887
we have a balance of $63.21 due you. Please let us know if you wish us to send you a check for this, and if so, where.

Yours truly,
THE MODERN PEN CO.
Hobart W. Geyer, Ass't. Treas.

4888 **Defendant's Exhibit K, March 27, 1911.**

Sept. 7, 1909.

H. C. Bartlett, Jr.,
Owensboro, Ky.

Dear Sir:

We have received a letter from the Younkman's Red Cross Pharmacy, Tulsa, Okla., in which he states that you gave him to understand you were selling the L. E. Waterman pens.

As we wrote you before, we want it distinctly understood that we have nothing to do with the L. E. Waterman pens, our being the A. A. Waterman and being far superior in every way to the old style and joint pens, our end joint line being as good or bet-
4889 ter than the Ideal, at less than half the price. We want our goods sold on their merits and cannot stand for any complaints of this sort, so that you will please see that it does not occur again.

Yours truly,
THE MODERN PEN CO.
Hobart W. Geyer,
Ass't. Treas.

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**Defendant's Exhibit M, March 27, 1911.**

Letterhead of the Aultman & Taylor Machinery Company.

4890

Owensboro, Ky., 9/9/09.

The Modern Pen Co.,
New York.
Gents:

I have your letter of the 7th and note what the Younkman Red Cross Pharmacy say about me giving them to understand that I was selling them the L. E. Waterman Pens. I wish to say that I did not do this. I explained to them that I was not and they looked our price list over and they can read and I say again that they knew what they were buying.

I can explain to you how this comes about. I think that L. E. Man is just about now in that section and he is causing the trouble not I. 4891

You seem to think that I am not explaining to the trade that I am selling the A. A. Waterman Pens, I wish to say to you that I do not have to misrepresent any thing to sell it and if you think I am not giving you a fair deal all you have to do is to say so and I will quit. What the L. E. Man may say to our customers I have nothing to do with but I am sure that is the trouble I trust that my explanation will meet with your approval if not please advise at once awaiting your reply, I remain

Yours truly,
H. C. BARTLETT, JR.

4892

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**Defendant's Exhibit L, March 27, 1911.**

Sept. 13, 1909.

H. C. Bartlett, Jr.,
Owensboro, Ky.

Dear Sir:

Your letter of the 9th inst. received, and we are pleased to note that you are not selling our pens as L. E. Waterman pens.

We had had no intimation that you were doing anything of this sort but when we had the statement direct from Mr. Younkman there was nothing for us to do but to put it up to you. Mr. Younkman wrote that he presumed our goods were fully as good as the Ideals and it is probable that your assumption, that the L. E. man is there making misstatements, is correct. 4893

Yours truly,
THE MODERN PEN CO.
Hobart W. Geyer,
Ass't Treas.

4894 **Defendant's Exhibit N, March 27, 1911.**

Letter-head of the Aultman & Taylor Machinery Company.

Owensboro, Ky., 10/23/10.

The Modern Pen Co.,
New York, N. Y.

Gents:

I hand you herewith a few orders and trust you find same acceptable.

I have not had a letter from you for two weeks and I fear you are *Dead*. I would like to have an answer to my letters relative to the Simmons Hardware Co. I lost out in Decatur, Ill., Bloomington, Ill., and several other places, the A. A. W. & Co. of Chicago have a man just ahead of me calling on all of our customers, telling them that we are not the A. A. W. Co. and that we are only making pens for the Jobbers and they are getting some of our customers. Has the A. A. W. Co. of Chicago a right to make our safety pen. They are selling it. If I could hold all my old customers with what new ones I am getting I would have a fair business. I do not know yet as to my next Sunday Town but will advise you later. Thanking you in advance for your prompt reply, I beg to remain

4895

Yours truly,
H. C. BARTLETT, Jr.

4896

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**Defendant's Exhibit A-1.**

Eugene Flewitt

MODERN PEN COMPANY
22 Thames Street
New York

Modern
Self Filling
and
Middle Joint
Fountain Pens

Sole Selling Agent
for A. A. Waterman & Co.

## Defendant's Exhibit A-2.

4897

Sir:

Please to take notice that I have qualified as Receiver of the property of William G. Frazer, under an order of Chief Justice Edward F. O'Dwyer of the City Court of the City of New York. A copy of such order and its notice of entry is hereto annexed. The undertaking required by law has been duly approved and filed herein in the office of the Clerk of the County of New York, on June 8, 1905.

I hereby demand that said William G. Frazer deliver to me all his property, including debts owing to him, not exempt by law from levy and sale under execution, including all stock held by him in the Frazer & Geyer Company, and all in- 4898
terest in the firm of A. A. Waterman & Co., in which said Frazer is a partner. I demand that on a liquidation of the assets of the partnership all of said Frazer's interest therein be turned over to me.

Dated, New York City, June 8, 1905.

GRATZ NATHAN,
Receiver.

To William G. Frazer,
Hobart W. Geyer, and
Arthur A. Waterman.

4899

4900 **Defendant's Exhibit A-3.**

CITY COURT OF THE CITY OF NEW YORK.

ISAAC E. CHAPMAN,
Plaintiff,

vs.

WILLIAM G. FRAZER,
Defendant.

An order having been heretofore made by Mr. Justice Edward F. O'Dwyer, on the 5th day of June, 1905, requiring William
4901 G. Frazer to attend and be examined concerning his property before him or one of the Justices of this Court, at Chambers thereof, appointed to be held at the Brown Stone Building, 32 Chambers Street, Borough of Manhattan, City of New York, on the 7th day of June, 1905, as prescribed in Article First, of Title 12, of Chapter 17 of the Code of Civil Procedure; and the said William G. Frazer having been accordingly examined before me on the said 7th day of June, 1905, and at the close of the hearing an application having been made by Morton Stein, Esq., of counsel for the judgment-creditor above named, for an order appointing a receiver herein in the presence of said William G. Frazer, and I having ascertained by the oath of said William G. Frazer, the judgment-debtor, that no action specified
4902 in Article First of Title 4, of Chapter 15 of the Code of Civil Procedure, or special proceeding instituted as prescribed in Article First of Title 12, of Chapter 17 of the Code of Civil Procedure, is pending against said judgment-debtor, now I do hereby, on the application of Alexander S. Bacon, Esq., attorney for the judgment-creditor herein, and on reading and filing the aforesaid order requiring the defendant to appear for examination, granted by Mr. Justice Edward F. O'Dwyer on the 5th day of June, 1905, and returnable June 7, 1905, and the examination of the judgment-debtor taken before me on the said June 7, 1905.

Appoint Gratz Nathan, Esq., of the Borough of Manhattan, City of New York, receiver of the property of the said William G. Frazer, the judgment-debtor herein, upon the receiver executing, acknowledging and filing with the Clerk of this Court, a bond in the form required by law, to the People of this State, in the penalty of $300, to be approved as to its form and manner of execution by a Justice of this Court, conditioned for the faithful discharge of his duties as such receiver. 4903

I do hereby further order that there should be allowed to Isaac E. Chapman, the judgment-creditor herein, the sum of $30 costs herein, and I hereby direct the payment thereof by said receiver out of any money that may come into his hands as such receiver.

Dated, New York City, June 7th, 1905.

EDWARD F. O'DWYER, 4904
Chief Justice of the City Court
of the City of New York.

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## Defendant's Exhibit A-4.

ARTICLES OF AGREEMENT, made the ninth day of January, one thousand nine hundred and one; between Arthur A. Waterman, of Cambridge, County of Middlesex, Commonwealth of Massachusetts; William G. Frazer and Hobart W. Geyer, of Brooklyn, New York, as follows: The said parties above named have agreed to become co-partners in business, and by these presents do agree to be co-partners together under and by the name or firm of A. A. Waterman & Co., for the purpose of manufacturing and selling gold pens, fountain pens and sundry kindred or allied articles and particularly the line of fountain pens heretofore sold by the said Arthur A. Waterman, and in the buying, selling and vending of all sorts of goods, wares and merchandise to the said business belonging, and to occupy the premises at Number 36 Gold Street, New York City, or such other premises as they may agree upon; their co-partnership to commence on the 9th day of January, Nineteen hundred and One (1901) and to continue until the thirty-first day of January, 4905

4906 Nineteen hundred and eleven (1911), and to that end and purpose the said William G. Frazer and Hobart W. Geyer shall each contribute the sum of Five hundred Dollars ($500) to the capital of said co-partnership, and said Arthur A. Waterman shall contribute all his time, energy and experience to the business of said firm, and also all the tools, dies, records, designs and other articles and assets belonging to said Arthur A. Waterman and recently in use in the business of a former firm of A. A. Waterman & Co., together with the use of all patents now owned by him for fountain pens, to be used and employed in common between them for the support and management of the said business, to their mutual benefit and advantage. And it is agreed by and between the parties to these presents that at all
4907 times during the continuance of their co-partnership, they and each of them will give their attendance; and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit and advantage, and truly employ, buy, sell and merchandise with their joint stock, and the increase thereof, in the business aforesaid, And Also, that they shall and will at all times during the said co-partnership, bear, pay and discharge between them, all rents and other expenses that may be required for the support and management of the said business; and that all gains, profit and increase that shall come, grow or arise, from or by means of their said business, shall be divided between them as follows: Arthur A. Waterman 15%; William G. Frazer 47½% and
4908 Hobart W. Geyer 37½%. Before any profits are divided it is understood and agreed that Arthur A. Waterman is to draw a salary of $2,000 per annum, payable $38.46 weekly, and also a Royalty of 2c. on each complete fountain pen made and sold by A. A. Waterman & Co., which salary and royalty are to be treated as a part of the expenses of said business. And all loss that shall happen to their said joint business by ill commodities, bad debts or otherwise, shall be borne and paid between them in the above named proportions.

And it is agreed by and between the said parties, that there shall be had and kept at all times during the continuance of their

co-partnership, perfect, just and true books of account, wherein each of the said co-partners shall enter and set down as well all money by them or either of them received, paid, laid out and expended in and about the said business, as also all goods, wares, commodities and merchandise, by them or either of them bought, or sold, by reason or on account of said business and all other matters and things whatsoever to the said business and the management thereof in anywise belonging; which said books shall be used in common between the said co-partners, so that either of them may have access thereto, without any interruption or hindrance of the other. 4909

And Also, the said co-partners, once in each year after the first year or oftener if necessary, shall make, yield and render, each to the other, a true, just and perfect inventory and account of all profits and increase by them or either of them made, and of all losses by them or either of them sustained; and also all payments, receipts, disbursements and all other things by them made, received, disbursed, acted, done or suffered in this said co-partnership and business; and the same account so made shall and will clear, adjust, pay and deliver, each to the other, at the time their just share of the profits made as aforesaid. And the said parties hereby mutually covenant and agree to and with each other, that during the continuance of said co-partnership, neither of them shall nor will endorse any note or otherwise become surety, for any person or persons whomsoever, without the consent of the other of the said co-partners. And at the end or other sooner determination of their co-partnership, the said co-partners, each to the other, shall and will make a true, just and final account of all things relating to their said business, and in all things truly adjust the same, and all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts or otherwise, shall be divided between them in the same proportions as the profits and losses are shared. 4910 4911

It is Understood and Agreed, that William G. Frazer and Hobart W. Geyer, jointly, are to have entire control of the business, except that Arthur A. Waterman is to have authority in these matters, viz: (a) The styles and quality of all goods

4912 made on which the name of A. A. Waterman & Co. shall appear; (b) List and net prices and terms to the trade. In the event of the death of any partner the remaining partners may continue the business and use the firm name of A. A. Waterman & Co., with the same status for the estate of the deceased partner as he himself had in his lifetime, except that in case of the death of Arthur A. Waterman his salary is to cease but his royalty is to continue.

IT IS UNDERSTOOD AND AGREED that William G. Frazer and Hobart W. Geyer obligate themselves to secure credit for A. A. Waterman & Co. for such amount as shall be needed up to Twenty-five thousand Dollars ($25,000) A. A. Waterman & Co., paying interest at the rate of six (6) per cent per annum on any
4913 sums so borrowed, or credit furnished.

IT IS UNDERSTOOD AND AGREED that A. A. Waterman & Co., shall contract with the Frazer & Geyer Company for the goods used by said firm so far as said Company are able to furnish them. Any interest in patents applicable to the line of business of said firm which any partner may have or may acquire shall be for the use and benefit of the co-partnership. ALL new patents shall be secured and defended, if at all, at the expense of the co-partnership free of any allowance for royalty.

AND IT IS FURTHER AGREED that upon the termination of said co-partnership said William G. Frazer and Hobart W. Geyer are each to be repaid the Five Hundred Dollars ($500) con-
4914 tributed as capital before there shall be any division of assets between the partners.

IN WITNESS WHEREOF, the said parties to these Articles have hereunto set their hands and seals the day and year first above written.

In the presence of

ARTHUR A. WATERMAN (L. S.)
WM. G. FRAZER (L. S.)
HOBART W. GEYER (L. S.)

## Defendant's Exhibit A-5.

4915

The foregoing Articles of Co-partnership are, this 12th day of December, 1901, modified as follows:

The term for which said co-partnership is formed shall be forty years from January 9th, 1901.

A. A. Waterman shall continue to travel and act as salesman as heretofore. The partners shall have equal authority in all prices and terms of sale: William G. Frazer shall have the general management of the partnership business.

As above modified said Articles of Co-partnership are hereby affirmed.

ARTHUR A. WATERMAN (L. S.)
WM. G. FRAZER (L. S.) 4916
HOBART W. GEYER (L. S.)

Endorsement: Arthur A. Waterman, William G. Frazer, Hobart W. Geyer. Copy Articles of Co-partnership. Dated January 9, 1901.

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## Defendant's Exhibit A-6.

Memorandum of agreement made this 27th day of August, 1901, between the Frazer & Geyer Company, a Corporation, party of the first part and Wm. G. Frazer and Hobart W. Geyer, parties of the second part, witnesseth that; 4917

WHEREAS the parties of the second part have as individuals formed a co-partnership with one Arthur A. Waterman, dated the 9th day of January, 1901, and to continue for ten years from that date for the selling of Fountain Pens, &c., and

WHEREAS the parties of the second part are both officers of and employed by the party of the first part, and

4918 WHEREAS the parties of the second part have each as individuals contributed to said co-partnership the sum of $500.00 of their own money as capital therefor, and

WHEREAS all the time and attention of the parties of the second part as officers and employees of the party of the first part, is due by them to the said party of the first part, and

WHEREAS the business of the above mentioned co-partnership does now and will hereafter require some part of the time and attention of the parties of the second part due as aforesaid to the party of the first part,

NOW THEREFORE in consideration of the foregoing and of one dollar paid by the party of the first part to each of the parties
4919 of the second part upon the signing of this agreement, it is agreed that the parties of the second part and each of them do hereby assign, sell, transfer and set over unto the party of the first part any and all sums of money or emoluments which shall become due and have become due to them from the time they formed said co-partnership of A. A. Waterman & Company, and during the whole term of said co-partnership over and above 10% on their investments in said co-partnership, to wit, the sum of $500 each, it being understood and agreed that the object of this agreement is that the parties of the second part may devote such time and attention due as aforesaid to the party of the first part as may be necessary to the business of said co-partnership and that the party of the first part shall have there-
4920 for, any and all sums of money and emoluments which the parties of the second part shall derive from said co-partnership over and above the said 10% on their investment, and it is further

AGREED that should the said co-partnership be dissolved before its expiration and also at its termination the parties of the second part and each of them will after first deducting their said investment of $500, each turn over any and all further sum which they or either of them receive to the party of the first part.

IN WITNESS WHEREOF the party of the first part has caused these presents to be signed by its Vice-president and its corporate

seal to be attached and the parties of the second part have hereunto set their hands and affixed their seal the day and date first above written. 4921

FRAZER & GEYER CO. (Seal)
by ISAAC E. CHAPMAN,
Vice Prest.
WM. G. FRAZER (Seal)
HOBART W. GEYER (Seal)

Attest,
Wm. G. Frazer,
Sec.
(Corporate Seal.)

County of New York, ss.: 4922

On this 27th day of August, 1901, before me personally came Wm. G. Frazer and Hobart W. Geyer, to me known and known to me to be the individuals described in and who executed the foregoing agreement and they severally acknowledged to me that they executed the same.

STEPHEN P. CUSHMAN,
Notary Public,
(Notarial Seal) Kings County,
Certificate filed in New York County.

County of New York, ss.:

On this 27th day of August, 1901, before me personally came Isaac E. Chapman, to me known, who, being by me duly sworn 4923
did depose and say that he resides in Brooklyn, New York City, that he is the Vice President of the Frazer & Geyer Company, the Corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

STEPHEN P. CUSHMAN,
Notary Public,
(Notarial Seal) Kings County,
Certificate filed in New York County.

4924 The above agreement is extended to the same time as the amended co-partnership papers, viz: 40 years from Jan. 9, 1901. Jany. 10th, 1902.

FRAZER & GEYER CO.,
By ISAAC E. CHAPMAN,
Vice Prest.

Wm. G. Frazer.
Hobart W. Geyer.

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## Defendant's Exhibit A-7.

4925 THIS AGREEMENT made this 12th day of December, 1901, between The Frazer and Geyer Company, a corporation organized under the Laws of the State of New York, party of the first part, and Arthur A. Waterman, party of the second part,

WITNESSETH:

WHEREAS the party of the first part is engaged in the manufacture of gold pens, fountain pens and other articles of a similar character and desires to increase its sales as largely as possible and avail itself of the services, reputation and skill of the party of the second part for that purpose, and

4926 WHEREAS the party of the second part is a partner in the firm of A. A. Waterman & Co., which is also engaged in the production and sale of similar goods under articles of co-partnership dated January 9th, 1901, and to run forty years from that date, with which firm the party of the first part has an exclusive contract for the manufacture of the goods sold by it and for furnishing capital and credit to said firm and as such partner is entitled, among other emoluments, to receive fifteen per centum of the net profits of said firm, and a royalty of two cents on each and every fountain pen made and sold by said firm of A. A. Waterman & Co., and

WHEREAS it is for the mutual benefit of said parties hereto as well as of said firm that close business relations shall exist between them:

NOW THIS AGREEMENT WITNESSETH: 4927

That the said party of the second part will, during the whole term of said co-partnership, sell for said party of the first part, the goods manufactured by it, as well as the goods put upon the market by said firm of A. A. Waterman & Co., and use his reasonable endeavors and skill and his personal influence and reputation to make the sales thereof as large as possible, and will assign to the said party of the first part his said fifteen per cent of the profits of said firm of A. A. Waterman & Co., and said royalty of two cents for each and every fountain pen made and sold by said firm of A. A. Waterman & Co., during the whole term of said co-partnership.

And the said party of the first part in consideration of the said services and of the personal influence and reputation of the party of the second part, and in consideration of the aforesaid assignment of his said profits of said firm of A. A. Waterman & Co., and in consideration of the aforesaid assignment of his said royalty, will pay, annually, to the said party of the second part the sum of One hundred dollars for every one per cent of the annual net profits made by said party of the first part from all its business computed on the actual investment, based on the book value of the stock, before dividends are declared upon any of its capital stock, said amount to be paid in cash up to Twelve hundred dollars and all amounts above twelve hundred dollars, in cash or in capital stock of the party of the first part, at its book value, at its option, and if paid in stock, then in all the different classes of stocks in equal number of shares; or if Mr. Waterman shall desire in First Preferred Stock or in First and Second Preferred Stock; and particularly in consideration of the aforesaid assignment of his said royalty, and of his said services, will issue to him, 17 shares of its First Preferred Stock; 17 Shares of its Second Preferred Stock and 16 Shares of its Common Stock. 4928 4929

And the said party of the second part, in consideration of the premises, further covenants and agrees not to engage in any other business than that of the said firm of A. A. Waterman & Co., and that covered by this agreement during said term, and will not, during said term, use or permit the use of his name

4930 in connection with any other business, firm, corporation or person whatsoever, but during the whole of said term will use his influence, reputation, energy and skill solely for the benefit of said firm and said parties of the first part, and that in case of his death the business of the said firm of A. A. Waterman & Co., may be continued under the same firm name upon complying with the Statutes of the State of New York for continuing the use of a firm name; and in case, for any reason whatsoever, the said party of the second part shall withdraw from said firm or from this agreement, before the expiration of the term above limited, he further covenants and agrees that he will not directly or indirectly engage in the manufacture or sale of fountain pens during the term contemplated by this agreement within the United States and will not use or permit the use of his name, in-
4931 fluence or reputation, by any corporation, firm or individual whatsoever in said business during the same period of time.

And in consideration of the premises of One dollar to him in hand paid by said party of the first part, the said party of the second part hereby sells, assigns, transfers and sets over unto said party of the first part, all his said fifteen per cent of the net profits of said firm of A. A. Waterman & Co., and his said royalty of two cents on each and every fountain pen made and sold by said firm of A. A. Waterman & Co., during the remaining term of that said co-partnership and hereby constitutes and appoints the said party of the first part his true and lawful attorney to collect the said profits and royalty from time to time as the same shall become due and payable.

4932 It is further mutually agreed that the 50 shares of stock to be issued to the party of the second part under this agreement shall be immediately assigned by him to Asa A. Spear of New York, N. Y. as Trustee, who shall hold the same for Ten years or until the death of said party of the second part, should he die within ten years; if the said party of the second part shall make default in the provisions of this contract within ten years, said stock shall be forfeited by him and transferred to the party of the first part by said Trustee; if the party of the second part shall die within ten years without default in the terms of this contract, said Trustee shall then transfer said stock to his personal representatives or as he shall direct; if no default shall be made by the

party of the second part within ten years said Trustee shall then transfer said stock to said party of the second part at the end of said ten years. 4933

This agreement shall go into effect January first, 1902.

In Witness Whereof the said party of the first part has set its corporate seal and caused these presents to be signed by President and Secretary and the said party of the second part has set his hand and seal the day and year first above written.

CHARLES T. GEYER,
President.

Wm. G. Frazer,
Secretary.
(Seal)

ARTHUR A. WATERMAN. 4934

In presence of
Asa A. Spear.

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## Defendant's Exhibit A-8.

THIS AGREEMENT made this 12th day of December, 1901, between The Frazer and Geyer Company of the Borough of Manhattan, City, County and State of New York, of the first part, and A. A. Waterman & Company of the same place of the second part, WITNESSETH:

WHEREAS the said firm of A. A. Waterman & Company is engaged in the production and sale of fountain pens, under articles of co-partnership running for the term of forty years from January 9th, 1901, and has not adequate manufacturing facilities and not sufficient capital for the carrying on of the business which it has developed, and hopes to develop in the future, and desires to make an advantageous arrangement for the manufacture of its goods, and for sufficient funds with which to carry on its business, and 4935

WHEREAS said The Frazer and Geyer Company is about providing ample facilities for the manufacture of goods desired

by said firm of A. A. Waterman & Company, and ample capital for its business purposes and desires to make a contract for the manufacture of goods for said firm of A. A. Waterman & Co., which shall be profitable to itself and beneficial to said firm:

NOW THEREFORE THIS AGREEMENT WITNESSETH:

That party of the first part has agreed and hereby does agree to manufacture for said firm of A. A. Waterman & Co., all the goods in their line, consisting of gold pens, fountain pens and the several parts thereof, which said firm can sell, and to furnish the capital needed to produce such manufactured goods as rapidly as they can be sold by said firm, and deliver the same to said firm as they are ordered.

That the party of the second part has agreed and hereby does agree that said party of the first part shall have the exclusive right to manufacture goods in their said line, and that they will not themselves, hereafter manufacture any goods in their line nor give any orders for or contract for, their manufacture by any other person, firm or corporation whatsoever than said party of the first part, but in case they cannot furnish goods the party of the second part may procure them elsewhere.

And it is further mutually agreed that said party of the first part shall be paid for the goods so manufactured by them and for the credit furnished said party of the second part as follows:

The party of the second part out of the proceeds of sales shall pay first, to the party of the first part the agreed price of goods manufactured by it.

Second: The salaries and wages of the necessary clerks and employees of said party of the second part, including a salary to A. A. Waterman of said firm, of two thousand dollars per annum; also the fair, necessary rent and expenses of carrying on the business of said firm.

Third: A royalty of two cents on each fountain pen made and sold by said firm of A. A. Waterman & Co., as provided in the articles of co-partnership of said firm of A. A. Waterman & Co.

Fourth: Ten per cent per annum dividends on the capital stock contributed to said firm of A. A. Waterman & Co., by Hobart W. Geyer and William G. Frazer and to the other partner, A. A. Waterman, the fifteen per cent of the net profits of said firm belonging to him under said articles of co-partnership. 4939

Fifth: All the balance of A. A. Waterman & Co.'s receipts shall be paid over to the party of the first part.

Settlement of accounts shall be made as often as once a month and the party of the first part shall have access to the books of the party of the second part at all reasonable times for the purpose of verifying accounts rendered by the party of the second part.

This agreement shall extend over the whole term of said co-partnership of A. A. Waterman & Co., to wit: Forty years from January 9th, 1901, and should said firm be dissolved for any reason before the end of said term and said business be continued under the same firm name or re-organized, the partners now composing the said firm of A. A. Waterman & Co., who shall continue said business shall continue this agreement or cause the same to be continued until said full term of forty years shall have run. 4940

This agreement shall take effect January first, 1902.

In Witness Whereof, the said party of the first part has caused its corporate seal to be hereunto affixed and these presents signed by its President and Secretary, and the party of the second part has set his hand and seal hereto the day and year first above written. 4941

CHARLES T. GEYER,
President.

Wm. G. Frazer,
Secretary.
(Seal.)

A. A. WATERMAN & CO.,
Per A. A. WATERMAN.

In presence of
Asa A. Spear.

4942 **Defendant's Exhibit A-9.**

The articles of co-partnership heretofore entered into, on or about the 9th day of January, 1901, between A. A. Waterman, William G. Frazer and Hobart Geyer, under the firm name and style of A. A. Waterman & Co., are hereby modified, to take effect the 1st day of March, 1904, as follows:

It is mutually agreed that instead of the salary of two thousand dollars ($2,000.00) per annum provided in said articles to be paid to said Waterman, there shall be paid to said Waterman a commission on a certain part of the firm's wholesale business on the following basis:

(1) There shall be and hereby is set aside and exclusively
4943 appropriated to said Waterman, a certain field which shall include the following portions of the United States, to wit: Maine, New Hampshire, Vermont, Ohio, that part of Michigan south of the Strait of Mackinac, Missouri, Kansas, Oklahoma, Nebraska, Colorado, New Mexico, Arizona, Utah, Wyoming and Montana; and all of the Dominion of Canada, excepting British Columbia.

(2) All sales of goods to the account of said A. A. Waterman & Co., in said field shall be deemed to be made and duly credited to the account of said Waterman, for the purposes herein provided, to wit: a commission (being the commission hereinbefore referred to as in lieu of the salary of two thousand dollars per annum) is to be paid monthly to said Waterman
4944 upon the wholesale business done by A. A. Waterman & Co. in the said field hereinbefore enumerated in paragraph one (1), not including the business in repairs and exchanges, which said commission shall be based on the collections from said wholesale business at the following rates of commission; on all collections from the said Canadian field, ten per cent (10%); on all collections from the said field located within the United States, twenty per cent (20%); except that collections for items sold other than Modern pens, so-called, shall yield but ten per cent (10%) commission: Provided, however, that if the collections from that part of the said territory located in the United States for any one business year (the business year

for this purpose being from the 1st day of March, to the last day of February, both inclusive, of each year), shall amount to more than $30,000, the rates of commission on the collections in said United States territory in excess of said $30,000 shall be one-half the rate of the aforesaid commission. 4945

(3) Said Waterman is to pay all his traveling expenses; also any salary and expenses of commission paid with his approval to any assistant working in his field under his direction; also for any pens given to any individuals at his instance in said field, the gifts being charged as if cash, at 20% of the retail or list prices if the names and addresses of recipients are supplied.

(4) A consignment account is to be kept with said Waterman charging all samples or surplus stock having a retail list price, at 50% discount and other samples if any at the lowest trade prices; and said surplus stock for use in the United States territory alone, may at said Waterman's pleasure consist of at least 144 Modern pens. Said Waterman is to make vouchers at least monthly for any pens he disposes of on the firm's account by deliveries from said samples or surplus stock. If any merchandise is not accounted for on said consignment account, any deficiency is to be charged to said Waterman, as if cash paid to him, at the net consignment rates. 4646

In witness whereof, we have hereunto set our respective hands and seals this eleventh day of June, in the year one thousand nine hundred and four A. D.

A. A. WATERMAN (Seal) 4947
WM. G. FRAZER (Seal)
HOBART W. GEYER (Seal)

4948 **Defendant's Exhibit A-10.**

The Articles of Copartnership heretofore entered into between Arthur A. Waterman of Cambridge, Massachusetts, and William G. Frazer and Hobart W. Geyer of Brooklyn, New York, in the firm name and style of A. A. Waterman & Co., under date of the ninth day of January, 1901, and various subsequent modifications thereof, are hereby further modified by mutual consent of the said copartners this 11th day of February in the year one thousand nine hundred and five, for the better interest and conduct of the business therein contemplated; the provisions of this modification of said articles of copartnership to be binding and effective and operative as of date of the first day of January, in the year one thousand nine hundred and five:

4949 It is mutually agreed that for the purposes of the business in which the said partnership is engaged, the territory embraced in North America shall be divided into two parts, namely an Eastern part (hereinafter referred to as the Eastern territory) which shall include that part of North America consisting of that portion of the Dominion of Canada including and east of the Province of Ontario; that part of the United States including and East of the southern peninsula of Michigan, Indiana, Kentucky, Tennessee and Mississippi, together with the West Indian Islands including Porto Rico; and a western part (hereinafter referred to as the Western territory) which shall include all that part of North America not included in the aforesaid Eastern territory.

4950 It is mutually agreed that, instead of the field or territory set aside and exclusively appropriated to Arthur A. Waterman by the modification of the articles of this copartnership bearing date the 11th day of June, 1904, there shall be and hereby is set aside and exclusively appropriated to said Waterman the said Western territory, for the purposes, uses and benefits hereinafter stated,

FIRST: It is agreed that the said Waterman may, at his own option, at any time on or before the first day of July, 1906, engage in the manufacture and sale of fountain pens, parts and accessories thereof, for his own separate interest, in

said Western territory, either under his own name or through the medium of a firm or copartnership or corporation which he may organize and which may bear the name of A. A. Waterman & Co., or any other name; the principal place of business for such manufacture and sale of said goods in said territory to be located in said territory. It being understood and agreed that in case said Waterman elects to engage for himself in such independent manufacture and sale of fountain pens, etc., in said Western territory, that he may cease to act as salesman and representative in said territory for the present copartnership of A. A. Waterman & Co., it being desired and understood that the business that may be so organized in said territory by said Waterman, and the business of the present firm of A. A. Waterman & Co. shall be separate and independent, each of the other, except to the extent that this modification of the articles of copartnership provide for certain limited relations, and that each of said concerns shall then be exclusive, as to the other, in its own defined territory as aforesaid. To this effect it is more particularly agreed that in case the said Waterman shall engage in the independent manufacture and sale as aforesaid of fountain pens, etc., in said Western territory, he or his firm or corporation shall have the sole and exclusive right to manufacture and sell in said Western territory such fountain pens, parts and accessories thereof as are now manufactured and sold by the present firm of A. A. Waterman & Co., without interference or competition in any form or manner in said Western territory by or from the present firm of A. A. Waterman & Co., or either of the other said partners Frazer and Geyer. And it is further mutually agreed that in case said Waterman engages in such independent manufacture of fountain pens, etc., he or his firm or contemplated corporation shall likewise not interfere or compete in any manner whatsoever with the business of the present firm of A. A. Waterman & Co., or Frazer & Geyer Co., hereinafter referred to, or its successors, in the said Eastern Territory. If in either one of the above-defined territories or sections of North America, there shall be a house that has a branch or branches in the other territory, effort shall be made to have the branches buy separately under such favoring conditions that all the divided purchases may be considered

4951 4952 4953

4954 one large purchase to secure to the branches the same prices or terms of sales that could be had by the main house; if the main house will not permit its branches to purchase separately, then the distribution to the branches shall be exhibited monthly and the party selling to the main house shall pay to the party in whose territory a branch is located a commission of twenty per cent (20%) of the net value of that portion of the business done with every such branch. Either the present firm or the said Waterman's proposed new firm or corporation may make and sell fountain pens, etc., in any and all other parts of the world outside of the territorial restrictions hereinbefore particularly provided for the respective concerns. Either the old (or present) firm, or said Frazer & Geyer Co., or its successors, and the proposed new concern may advertise separately at its own ex-
4955 pense, including placards, signs, show-cases and periodicals; but advertising in periodicals which may be jointly undertaken and the form of advertisement jointly approved shall be one-third paid for by the said Waterman's contemplated new firm or corporation in said Western territory, and two thirds (2/3) by said Eastern business.

It is further mutually agreed that in case said Waterman shall establish himself in the independent manufacture as aforesaid of fountain pens, etc., then he or any firm or corporation so organized by him, and the present firm of A. A. Waterman & Co., shall have equal rights and privileges to manufacture and sell fountain pens under a perpetual free use of all patents, trade-marks and improvements now or hereafter owned, acquired or
4956 used by either the present firm or the contemplated independent concern; but, provided that if either of the two concerns wishes to have the use and benefit of any patent or other interest acquired by the other after said Waterman shall engage independently in the manufacture and sale of fountain pens, it must pay one-half of the expense incurred in obtaining such patent or interest; and provided also that the present firm or any member thereof or the proposed new firm or corporation, shall not sell or transfer patents, trade-marks, rights or interests relating to patents, trade-marks, etc., used jointly by them in the manufacture of and sale of fountain pens, except by mutual consent and agreement in writing, between the old and

new concerns and the assent of the Frazer & Geyer Co., or its successors. 4957

It is further mutually agreed that, if said Waterman shall engage in the independent manufacture and sale of fountain pens as aforesaid, the prices, discounts and terms of sale on such fountain pens, made and sold by both the old and the new concern as are substantially identical in construction, size and appearance, shall be those fixed and in force by said old concern at the time when said Waterman shall start his independent business and thereafter shall be changed only by mutual agreement, and neither concern shall sell any such fountain pens at more favorable prices, discounts and terms of sale than thus agreed upon; but either concern may make the said prices higher, but rates of discount and terms of sale shall not be more favorable to buyers. Either concern may increase or decrease the kinds and styles of fountain pens made and sold by it. 4958

It is further mutually agreed that in case said Waterman shall engage in the independent manufacture as aforesaid of fountain pens, etc., then neither the present firm nor the contemplated new organization shall manufacture or sell, in any part of the world, any form of fountain pens which the other concern shall decide has characteristics peculiar only to the fountain pens made by it, except under names and at prices, discounts and terms of sale to be mutually agreed upon between the two concerns. It is agreed that all fountain pens or parts thereof to be manufactured and sold by either the present firm or the contemplated new organization which fountain pens or parts bear in any manner the name of Waterman, shall be uniformly stamped or marked "A. A. Waterman & Co.," of "New York" or "Chicago" or other proper place of manufacture; this provision applying to such goods whether sold within the limitations of territory hereinbefore defined or in any other part of the world. 4959

It is further mutually agreed and understood that nothing herein contained shall prevent the said Waterman from transferring and assigning to Frazer & Geyer Co., a corporation organized and existing under the laws of the State of New York, all of his assignable and transferrable interests in any patents, trade-marks and licenses relating to the manufacture and sale

4960 of fountain pens for the use of said corporation, including patents, trade-marks and licenses heretofore contributed by said Waterman to the use of the present copartnership of A. A. Waterman & Co., it being understood and agreed however that any such assignment shall be subject to the continued free use, by the present firm of A. A. Waterman & Co., of all such patents, trade-marks and licenses, during the continuance of said firm.

It is further mutually agreed that if said Waterman shall engage as aforesaid in the independent manufacture and sale of fountain pens, etc., in said Western Territory, he or the firm or corporation so to be organized by him shall purchase from the present firm all show cases owned by it in said Western territory, so far as they are in use by dealers for the display
4961 of modern fountain pens in said Western territory, paying for such show cases seventy-five per cent of the cost thereof (not including in the cost any transportation charges), which purchase price shall be paid fifty per cent (50%) when the proposed independent concern begins business in said Western territory, and the balance of such purchase price in the five months immediately following in equal installments.

The said Waterman shall, notwithstanding he may engage as aforesaid in the independent manufacture and sale of fountain pens, etc., be ready at any time to give thought and advice for the good of the present business, upon reasonable notice and request; and whenever requested by the present firm to spend more than a nominal amount of time in effecting the
4962 maintenance of the standard of the products of the present firm or otherwise promoting and assisting in its business, he is to be paid, in addition to his present fifteen per centum of profits and two cent royalty in said present firm, an amount per day to be agreed upon together with all necessary expenses incurred in doing such work, including necessary expenses of travelling and maintenance; but, if the said Waterman engages in the independent manufacture and sale of fountain pens as aforesaid, he shall thereupon yield up and surrender to the copartner, William G. Frazer, all his authority to determine the quality of the products of the present firm of A. A. Waterman & Co.

SECONDLY: It is mutually agreed that until said Waterman shall engage as aforesaid in the independent manufacture and sale of fountain pens, etc., or (in case he does not elect to engage in such independent manfacture of such pens), during the remainder of the forty year term appointed for this present copartnership, there shall be set aside and exclusively appropriated to said Waterman, commencing as of date of January 1st, 1905, all of the field or territory hereinbefore defined as the Western Territory, excepting therefrom only Mexico and Central America, as an exclusive territory in which said Waterman may represent the present firm of A. A. Waterman & Co., and said Frazer & Geyer Co., in lieu of the territory heretofore exclusively appropriated to said Waterman by a certain modification of the articles of copartnership bearing date the eleventh day of June, 1904. 4963 4934

All sales of goods to the account of A. A. Waterman & Co. in said territory shall be deemed to be made and duly credited to the account of said Waterman, for the purposes herein provided, to wit: a commission is to be paid monthly to said Waterman upon the wholesale business done by A. A. Waterman & Co., in the said territory, not including business in repairs and exchanges, which said commission shall be based on the sales and shipments to said territory, at the following rates of commission: on all sales and shipments to the Canadian portion of said territory, ten per cent (10%); on all sales and shipments to the said territory located within the United States, twenty per cent (20%), except that upon sales and shipments of items sold other than as modern pens, so-called, the commission rate shall be ten per cent (10%) and except that on fountain pens wholesaled at fifty cents each or less, no commission shall be paid. Provided, however, that if the sales and shipments to that part of said territory located in the United States shall amount, in one year, to more than $45,000, the rates of commission on the sales and shipments in excess of said $45,000, in said United States territory shall be one-half of the aforesaid rate, and provided further that if the total combined sales and shipments by A. A. Waterman & Co. and Frazer & Geyer Co., in the said United States territory for any year is less than the said combined sales and shipments for the year 1904, then the 4965

4966 said Waterman shall receive a commission of only fifteen per cent (15%) upon the business of that year on which he otherwise would have received twenty per cent (20%).

Said Waterman is to pay all his travelling expenses; also any salary and expenses or commission paid with his approval to any assistant working in his field under his direction; also for any pens given to any individuals at his instance in said field, the gifts being charged as if cash, at 20% of the retail or list prices if the names and addresses of recipients are supplied.

A consignment account is to be kept with said Waterman charging all samples or surplus stock having a retail list price, at 50% discount and other samples if any at the lowest trade prices; and said surplus stock for use in the United States territory alone, may at said Waterman's pleasure consist of at
4967 least 144 Modern pens. Said Waterman is to make vouchers at least monthly for any pens he disposes of on the firm's account by deliveries from said samples or surplus stock. If any merchandise is not accounted for on said consignment account, any deficiency is to be charged to said Waterman, as if cash paid to him, at the net consignment rates.

Any assistant of said Waterman approved by the partner Frazer or Geyer, is to have consigned to him constantly suitable samples charged at the same rates as hereinbefore provided for the consignment of samples to said Waterman. But said Waterman shall not be held responsible for any samples furnished to any such assistant or their indebtedness to A. A. Waterman & Co.

4968 Commissions are due and payable when the goods are shipped.

It is further mutually agreed that during the continuance of this commission arrangement the said Waterman and his assistants may act in said Western territory as salesman for the corporation of Frazer & Geyer Co., and may also represent any other person, firm or corporation in said territory so far as he or they do not solicit business in competition with the business of A. A. Waterman & Co., or Frazer & Geyer Co.

It is expressly agreed that while the said Waterman represents the present firm of A. A. Waterman & Co., upon the aforesaid commission basis and arrangement in said Western territory, there shall be no unfavorable discrimination against

the customers and the business in said territory in any manner whatsoever and more particularly in the manner, care and promptness to be exercised by said firm in filling orders for goods therefrom or in the quality of the goods supplied thereto or in the general services and attention rendered, and nothing shall be done in the management of the said firm and its business that may tend to retard the development and promotion of the firm's business in said Western territory to the advantage of any other territory or locality in which the firm may also be engaged in doing business; and there shall be furnished to said Waterman, whenever requested by him, but not oftener than once for each month, a list of all unfilled orders from customers in his said Western territory, so that he may require satisfactory explanation of the cause of any unreasonable delay in filling of such orders. 4969 4670

THIRDLY: It is further mutually agreed and expressly understood that it is entirely optional with said Waterman whether or not he will organize a new firm or corporation to engage in the independent manufacture of fountain pens, etc., as aforesaid in said Western territory; provided, only that if he elects to so organize such an independent firm or corporation he must do so, and the said proposed new concern must be ready to begin business in said Western territory on or before the first day of July, 1906.

FOURTHLY: It is further mutually agreed and expressly understood that the continuance of the aforesaid commission arrangement in said exclusive Western territory provided for by this modification of the co-partnership is optional with said Waterman; that in the event that the said commission arrangement is not terminated, as aforesaid, by the formation of an independent firm or corporation, the said Waterman may, at his option, nevertheless, terminate the same at any time, either before or after the first day of July, 1906; and he may at any time withdraw from and cease to represent the present firm of A. A. Waterman & Co., and Frazer & Geyer Co., in said territory in which event he shall surrender said territory and all his rights and interest therein under this modification of the articles of co-partnership; in case he shall or shall not be- 4971

4972 gin business on his own account by July 1st, 1906, as hereinbefore provided, he shall on that day retire as an active partner in said present firm of A. A. Waterman & Co., retaining no connection with the said firm or its business except he shall permit therein the continued use of all his patents, trade-marks and improvements and shall permit the remaining partners to continue the said business under the said firm name of A. A. Waterman & Co., upon their complying with the statutory requirements to obtain the right to use said firm name and in return for the continued use of his name and patents, trade-marks and improvements, he shall be entitled to receive from any copartnership so organized or its successors the fifteen per cent (15%) of profits and the two cents per pen royalty as provided
4973 in the original articles of copartnership of A. A. Waterman & Co., bearing date January 9th, 1901, being the profits and royalty hereinbefore assigned by said Waterman to Frazer & Geyer Co. But said Waterman, may at his own option, if he does not organize as aforesaid, a firm or corporation for the independent manufacture and sale of fountain pens, etc., continue for the remainder of the 40 year term of the co-partnership, or for any part thereof, the commission arrangement herein provided.

Provided further that as long as said Waterman continues as a salesman as hereinbefore provided, said Waterman shall retain and exercise all the rights and power which he now has as a partner in the present firm of A. A. Waterman & Co., as to the quality of all pens and their accessories made and sold as
4974 the product of the present firm of A. A. Waterman & Co., or of any firm that may be formed after July 1st, 1906, as the successors to the present firm, which goods bear the name or initials of said Waterman in any form; and provided further that the reservation to said Waterman of this right and power as to the quality of all said goods shall apply to and be binding upon any concern or firm continued, formed or organized after July 1st, 1906, which goods bear the said Waterman's name as hereinbefore provided, and this privilege and power to pass on the quality of said goods, both of the present firm of A. A. Waterman & Co., or of any succeeding firm as aforesaid is an express condition and consideration for the use as hereinbefore

provided of the name of said Waterman in any such firm, or on any such goods. 4975

It being the desire and intent and is mutually agreed to provide hereby that the said Waterman may at any time hereafter voluntarily at his own option give up the aforesaid commission arrangement and be at liberty to engage in any business other than in the manufacture and sale of fountain pens; it being expressly agreed that the said Waterman will not, during the continuance of said forty years term of the copartnership of A. A. Waterman & Co., engage in the manufacture and sale of fountain pens (except as hereinbefore provided) and will not during said term of forty years use or permit the use of his name in any manner in any other firm or corporation engaged in the manufacture or sale of fountain pens, except that the said name may be used by the corporation of Frazer 4976
& Geyer Company under the terms and conditions of a certain agreement bearing even date herewith between said Frazer & Geyer and said Waterman.

In Witness Whereof, the said parties hereto have hereunto set their hands and seals the 11th day of February, 1905.

ARTHUR A. WATERMAN,
WM. G. FRAZER,
HOBART W. GEYER.

In the presence of
Asa A. Spear.

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4977

## Defendant's Exhibit A-11.

This Agreement, made and entered into at the City and State of New York, this eleventh day of February, in the year one thousand nine hundred and five, by and between Frazer & Geyer Company, a corporation organized and existing under the laws of the State of New York, party of the first part, and Arthur A. Waterman, of Winchester, State of Massachusetts, party of the second part, Witnesseth:

4978 Whereas, there is now in existence a certain contract or agreement duly made by and between the aforesaid parties, bearing date the twelfth day of December, 1901, binding upon the said parties until the ninth day of January, 1941, relating among other matters to certain services of the party of the second part and to the payment by the party of the first part unto the party of the second part of a portion of its profits annually and the delivery to be held in trust of certain fifty (50) shares of the capital stock of said Frazer & Geyer Company corporation, party of the first part, to the use and benefit of the party of the second part, and,

Whereas, the parties hereto are desirous of making other and different arrangements for the manufacture and sale of fountain pens and are willing to relieve the party of the second part
4979 of any obligations not to engage in any business during the term of said agreement other than therein specified:

Now, Therefore, This Agreement Witnesseth: That the parties hereto and thereto have mutually agreed and do hereby mutually agree as follows:

FIRST: That the aforesaid agreement made by the parties hereto and dated the twelfth day of December, 1901, is vacated, abrogated and in all respects set aside and the parties release each the other from all obligations thereby imposed upon either to the other, except and only to the extent and effect that any of said obligations are hereinafter by this agreement expressly saved and reserved:

4980 And it is mutually and particularly agreed:

(1) The assignment by the party of the second part to the party of the first part, of his interest of fifteen per cent (15%) of the profits, and of a certain royalty of two (2) cents on each fountain pen made and sold by the firm of A. A. Waterman & Co., a copartnership formed under articles dated January 9th, 1901, during the continuance of the term of said copartnership, is continued of full force and effect, and the party of the first part continues to be constituted and appointed the true and lawful attorney of the party of the second part to collect the said profits and royalty from time to time as the same shall become due and payable.

(2) The fifty (50) shares of the capital stock of the party of the first part (to wit: 17 shares of First Preferred Stock, 17 shares of Second Preferred Stock, and 16 shares of Common Stock) issued to the party of the second part and now held in trust by Asa A. Spear, as trustee, for the benefit of the party of the second part under the terms of the aforesaid agreement between the parties hereto, dated December 12th, 1901, shall at the time of the signing and sealing of this agreement be conveyed and delivered to the party of the second part absolutely and the said trusteeship terminated, and the party of the first part will execute or cause to be executed any and all further paper, conveyance, indenture or power necessary to effect at said time the transfer to the party of the second part absolutely of the said fifty shares of stock and to determine thereby the said trusteeship of the same. 4981 4982

(3) It is agreed that the party of the second part shall not, and will not, during the terms of said firm of A. A. Waterman & Co., (which is organized for a term of forty (40) years under articles of copartnership dated the ninth day of January, 1901, and modifications thereof, and with which said firm the party of the first part has a certain agreement dated the twelfth day of December, 1901, for the exclusive manufacture of the goods to be sold by the said firm of A. A. Waterman & Co.) engage in the manufacture or sale of fountain pens either in his own name or the name of any other person, firm or corporation, and will not use or permit his name to be used during said term of forty years in connection with the manufacture or sale of fountain pens either alone or with any person, corporation or firm, other than with the aforesaid firm of A. A. Waterman & Co., or other than under and in accordance with the terms, conditions and agreements of a certain modification bearing even date herewith of the articles of copartnership of said firm of A. A. Waterman & Co., the execution of which said modification of said articles of copartnership by the party of the second part as a member of said firm is a consideration for the making of this agreement between the parties hereto. 4983

It being further expressly understood and agreed that the right, privilege and option of the party of the second part to

4984 engage in the manufacture and sale of fountain pens on his own account as provided by said modification of the articles of said copartnership (to wit: other than as a member of the aforesaid firm of A. A. Waterman & Co.) shall not be deemed to be and are not in any way or manner affected, abridged, limited or restrained by reason of any terms or conditions, legal or equitable, of the aforesaid agreement dated the twelfth day of December, 1901, between the party of the first part and the said firm of A. A. Waterman & Co., and relating among other matters to the exclusive manufacture of the goods to be sold by the said firm of A. A. Waterman & Co., and the terms, conditions and agreements of said agreement between the party of the first part and said firm shall have no application to the business that may be organized by the party of the second part
4985 for the manufacture and sale of fountain pens in accordance with the terms and conditions of said modification of the said articles of copartnership of even date herewith.

SECONDLY: The party of the second part agrees that at any time when requested by a majority of the directors of the party of the first part to consent to the incorporation of a new company under the corporate name of A. A. Waterman Pen Company or A. A. Waterman & Co., or some similar name, to do business in the territory reserved to the present and aforesaid firm of A. A. Waterman & Co., by the modification of the articles of copartnership of said firm bearing even date herewith, which territory is referred to as that part of the
4986 Dominion of Canada, including and East of the Province of Ontario, that part of the United States including and East of Southern Michigan, Indiana, Kentucky, Tennessee, Mississippi and the West India Islands, including Porto Rico; said new company to be incorporated in one of the states within said reserved territory, other than the State of New York. And as a condition precedent to the use of the name of the party of the second part in any such new incorporated company in said territory, the party of the first part agrees to furnish to the party of the second part a good and sufficient surety to protect party of the second part from any and all liability, at law or in equity, that may accrue against the party of the

second part by reason of permitting his name to be used in such incorporated company, and the party of the first part will at its own expense defend and cause to be defended the party of the second part from any and all manner of causes or alleged causes of action on account of the use of the name of the party of the second part in any such incorporation as aforesaid, upon notice so to do from the party of the second part to the party of the first part. 4987

THIRDLY: In consideration of the premises herein, and having particular regard to the release by the party of the second part of his right to receive of the party of the first part the sum of one hundred dollars for every one per cent of the annual net profits of the party of the first part as more particularly provided by the said agreement between the parties hereto dated the twelfth day of December, 1901, the party of the first part agrees to and hereby does release and discharge the party of the second part of all manner of claims or demands on account of any and all indebtedness owing to the party of the first part from the party of the second part upon the thirty-first day of December, 1904. And the party of the first part will further pay or cause to be paid to the firm of A. A. Waterman & Co., a sum sufficient to discharge all manner of indebtedness of the party of the second part to said firm, which indebtedness existed on December 31st, 1904; the said sum to be paid and said indebtedness discharged so soon as the same can be determined. And upon such payment being made and said indebtedness discharged the said party of the second part hereby releases and discharges the party of the first from all claim and demand whatsoever for the payment of said one hundred dollars for every one per cent of profits. 4988 4989

FOURTHLY: The party of the second part agrees to assign to the party of the first part his individual interest in all patents and trade-marks in which the aforesaid firm of A. A. Waterman & Co., is interested, including the right to manufacture and sell and manufacture or sell fountain pens and parts thereof bearing the name of "A. A. Waterman & Co." and agrees to obtain for the party of the first part any further assurance of title therein necessary from the said firm of A. A.

4990 Waterman & Co., said assignment by the party of the second part of such patents and trade-marks being however subject to and conditioned upon the free perpetual use by the present firm of A. A. Waterman & Co., of all such patents and trade-marks hereby assigned and transferred: Provided, however, that it shall be and is agreed that neither of the parties hereto nor the said firm of A. A. Waterman & Co., shall sell, assign, transfer or license to any person, firm or corporation, except the possible successors of the party of the first part, the use of any such patents, trade-marks or improvements except by mutual agreement and consent of the parties hereto and the said firm of A. A. Waterman & Co., And provided further that the only separate use of any such patents, trade-marks and improvements which the party of the second part shall be
4991 entitled to make, shall be under the terms and conditions of the modifications of the articles of copartnership of said firm of A. A. Waterman & Co., bearing even date herewith; and in the event that the party of the second part does engage in the separate manufacture and sale of fountain pens under the terms and conditions of said modification of the articles of said copartnership, then and in that event the said party of the second part shall be entitled to the free perpetual use, not only of all the patents, trade-marks and improvements and rights hereby assigned, to the party of the first part, but also of all other patents, trade-marks and improvements and rights relating to the manufacture of fountain pens and now belonging to the party of the first part or hereafter owned or acquired by it.
4992 It is further agreed that any patents and improvements hereafter made by the party of the second part shall likewise be of free perpetual use to the party of the first part. If either party hereto wishes to have the use of and benefit of any patent or other interest purchased after said Waterman shall engage in such independent manufacture, that party must pay one-half the expense incurred in obtaining the said patent or interest. It is agreed that all fountain pens or parts thereof manufactured or sold by the party of the first part which shall bear the name in any manner of the party of the second part shall be uniformly stamped or marked "A. A. Waterman & Co." of "New York" or the other place of business of the party of the first part.

It is further agreed that in the event that the party of the second part shall engage in the separate manufacture and sale of fountain pens under the terms and conditions of the modification of the articles of copartnership of the firm of A. A. Waterman & Co., bearing even date herewith, then it is agreed that the reservation therein as to the exclusive use of certain territority in North America shall likewise in all respects obtain against and be binding upon both parties hereto. All limitations and restrictions as to competition, etc., contained in said modification shall bind each of the parties hereto with like force and effect as though bodily incorporated herein. 4993

It is mutually agreed that in the event that the party of the second part elects to continue to sell goods of A. A. Waterman & Co., upon commission in certain exclusive territory as provided by the said modification bearing even date herewith of the articles of copartnership, then the party of the second part shall be and the party of the first part hereby constitutes and appoints him its sole agent or salesman in said defined territory upon all the terms and conditions by which the party of the second part is to sell goods in said territory for the firm of A. A. Waterman & Co. as provided by the said modification of the copartnership bearing even date herewith, the rates of commission to be those therein specified. 4994

In Witness Wereof, the said party of the first part has hereunto set its corporate seal and caused these presents to be signed by its Vice-President and Secretary and the party of the second part has hereunto set his hand and seal the day and year first above written. 4995

WM. L. CHAPMAN,
Vice-Prest.
Wm. G. Frazer,
Secretary.

(Seal.)

ARTHUR A. WATERMAN.

In the presence of
A. A. Spear.

4996 **Defendant's Exhibit A-12.**

TEMPORARY AGREEMENT, entered into at the City of New York, this 27th day of May, 1905, between Arthur A. Waterman, of Winchester, Massachusetts, and Isaac E. Chapman, of the City of New York, WITNESSETH:

WHEREAS, the Frazer & Geyer Company is now in process of reorganization, and it is contemplated that the present firm of A. A. Waterman & Co., should be dissolved or reorganized, and it is desirable that the parties hereto should come to a substantial agreement pending the completion of these negotiations, now, therefore,

In consideration of one dollar to each in hand paid, the receipt whereof is hereby acknowledged, it is hereby agreed:

4997

I. That in the event of such reorganization, the new firm of A. A. Waterman & Co. shall consist of Arthur A. Waterman, Isaac E. Chapman and William L. Chapman, and/or their representatives; or of Isaac E. Chapman and William L. Chapman and/or their representatives, with perpetual permission and right to operate and do business and manufacture and/or sell fountain pens, &c., under the name of A. A. Waterman & Co.

II. The new copartnership agreement shall be substantially the same as the present copartnership agreement between A. A. Waterman, W. G. Frazer and H. W. Geyer, dated February 11, 1905, and the relations of the new firm to the new corporation shall be substantially the same as those of the old firm to the

4998 old corporation.

III. Mr. Isaac E. Chapman agrees to loan Mr. Arthur A. Waterman additional money to Fifteen hundred dollars ($1500.-00) in the aggregate, as follows:

One hundred and twenty-two dollars and fifty cents ($122.50) having already been paid to Mr. Waterman.

One hundred and eighty-eight dollars and fifty cents ($188.-50) to be paid on the signing of this temporary agreement.

One hundred and eighty-nine dollars ($189.00) to be paid Mr. Waterman on June 15th, 1905.

Two hundred and fifty dollars ($250.00) to be paid Mr. Waterman on July 1st, 1905. 4999

And the balance, Seven hundred and fifty dollars ($750.00) to be paid for Mr. Arthur A. Waterman's account to cover the assessment on fifty (50) shares of stock of the Frazer & Geyer Company.

IV. As security for the payment of loan, Mr. Waterman is to endorse his forty-six (46) shares of stock and deposit them with Isaac E. Chapman as collateral, and give Isaac E. Chapman a stock note, if so desired.

V. Liquidation of this loan is to be made as follows:

One hundred dollars ($100.00) per month on November 1st, 1905, and each month thereafter until the entire loan and interest thereon at six per cent (6%) shall have been paid in full. 5000

VI. Mr. Waterman undertakes to anticipate the discharge of his indebtedness by paying on August 1st, 1905, one-quarter (1/4) of his net commissions remaining after paying business expenses for July, 1905, and to continue paying one-quarter (1/4) in this way every month thereafter.

VII. For the payment of these various sums Mr. Waterman agrees to send to Mr. Isaac E. Chapman drafts on the new Pen Company, monthly, as soon as the Company is able to determine his commissions; or he will otherwise assign commissions due from the Pen Company to cover amounts due under this agreement. 5001

VIII. Immediately after the said reorganization shall have been accomplished, the parties hereto shall enter into a formal agreement, which shall carry out the intent of this temporary agreement, except in so far as it may be changed by mutual consent.

IX. Mr. Waterman hereby grants to Mr. Isaac E. Chapman an option to purchase before reorganization or payment of assessment the stock to be held by him as collateral under the

5002 terms of this agreement at Fifty dollars ($50.00) per share, said option to expire upon the payment of the assessment.

WITNESS our hands and seals the day and year first above written.

(Signed) ARTHUR A. WATERMAN, (Seal.)
(Signed) ISAAC E. CHAPMAN, (Seal.)

Witness as to both
(Signed) Joseph J. Glatzmayer.

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## Defendant's Exhibit A-13.

5003 ARTICLES OF COPARTNERSHIP, entered into at the City of New York, on this twelfth day of June, 1905, between Arthur A. Waterman, Isaac E. Chapman and William L. Chapman, Witnesseth:

In consideration of one dollar to each in hand paid, by the other, and other good and sufficient consideration, the receipt whereof is hereby acknowledged, it is hereby mutually agreed as follows:

I. The parties hereto hereby enter into a partnership and constitute themselves copartners for the transaction of business under the firm name of A. A. Waterman & Co.

II. The object of this partnership is to manufacture, purchase, and sell pens, fountain pens, and other articles, and the different
5004 parts and materials thereof, and accessories thereto.

III. Profits and losses shall be shared equally by the parties hereto.

IV. The term of this copartnership shall be thirty-six years from the date hereof.

V. Any capital contributed to said firm by any member thereof shall be deemed a loan; shall bear 6% interest, and shall be, at the option of the partner advancing the same, repaid before any profits shall be distributed.

VI. The management of the affairs of the said firm shall be and remain in the hands of the Messrs Isaac E. and William L. Chapman, who alone are hereby authorized to make, accept, or endorse, checks, notes, drafts and other instruments for the payment of money, and to enter into any contracts or obligations that shall bind the partnership as such. 5005

VII. It is the principal purpose of this partnership, to manufacture, purchase and sell fountain pens and parts thereof. A new corporation, to be called the Modern Pen Company, shall be organized, in which the parties hereto shall be interested, which corporation shall be the sole sales agent of this manufacturing firm of A. A. Waterman & Co., and with which said selling company, Mr. Waterman may have contract relations.

VIII. Arthur A. Waterman hereby grants to this said firm of A. A. Waterman & Co. the right to use the name of A. A. Waterman and said firm name of A. A. Waterman & Co., in connection with the manufacture and sale of fountain and other pens and articles perpetually, and exclusively, except as hereinafter reserved to said Waterman to make use of said firm name, and hereby conveys to said firm all the good will now existing and attaching to the name of A. A. Waterman and A. A. Waterman & Co.; this grant shall not be modified or diminished by said Waterman ceasing to have an interest in this said firm under the terms of this agreement, or by his death or otherwise. 5006

IX. The Continent of North America is hereby divided into two districts, called the Eastern District and Western District. The Eastern District shall consist of that portion of the Dominion of Canada including and east of the Province of Ontario; that part of the United States including and east of the southern peninsula of Michigan, Indiana, Kentucky, Tennessee and Mississippi, together with the West India Islands including Porto Rico; and a Western District which shall consist of all that part of North America not included in the aforesaid eastern territory. 5007

If said A. A. Waterman shall so desire, it is hereby agreed that he may do business on his own account, under a firm, trade, or corporate name of A. A. Waterman & Co., or other

5008 suitable name, either alone or with others, in the manufacture and, or, sale of fountain and other pens in the said western territory provided he shall begin such business before July 1, 1906, in which event he shall have the exclusive right to said western territory, and the remaining members of this firm of A. A. Waterman & Co. shall have the exclusive right to the eastern territory, operating under the name of A. A. Waterman & Co.

If said A. A. Waterman shall exercise said option before July 1, 1906, and establish such business on his own account as aforesaid, he shall thereupon cease to have any interest in this firm of A. A. Waterman & Co., which said firm shall belong exclusively to Messrs. Isaac E. and William L. Chapman, their heirs, executors, administrators and assigns; and if said Waterman
5009 shall fail to exercise his said option before July 1, 1906, all his interest in this said firm of A. A. Waterman & Co. shall, in like manner, cease and determine in all respects the same as if he had exercised such option.

X. In the event of said Arthur A. Waterman doing business on his own account in said western territory, the following covenants shall prevail:

A. Advertising, jointly approved of, in periodicals having a general circulation throughout the United States, shall be paid for, 1/3 by said Waterman, representing the western trritory, and 2/3 by the Messrs. Chapman, or the Modern Pen Company as their selling agents, representing the eastern territory. After
5010 three years from the date of said Waterman going into business for himself, the expenses of general advertising, jointly approved of, shall be paid for according to the proportion of goods sold in the eastern and western territory in the United States.

B. Each party hereto shall have the perpetual free use of all patents, trade-marks and trade names (within their respective territories) in which either party hereto, or the Modern Pen Company, now has, or may hereafter acquire any interest.

C. Any patents or improvements in patents heretofore taken out by said Waterman or that he may hereafter acquire, shall be used in common between the parties, upon the Messrs. Chap-

man paying one-half of the expenses thereof, and should the Messrs. Chapman or the Modern Pen Company take out or acquire other similar patents, said Waterman shall have equal rights with them, upon paying one-half of the expenses therefor. 5011

D. The parties hereto shall agree on a minimum price of goods to be sold in the eastern and western territories.

E. All goods manufactured in the eastern territory, shall be marked "A. A. Waterman & Co., New York" and all those manufactured in the western territory, shall be marked "A. A. Waterman & Co., (or some similar name) Chicago."

F. As soon as said Waterman shall go into business for himself, he shall purchase all show cases in use for "Modern" pens formerly belonging to the firm of A. A. Waterman & Co., and, or, Frazer & Geyer Company, that shall then be situated within the boundaries of the said western territory, paying therefor the actual cost less 25%, to be paid, one-half when the proposed independent concern begins business in said western territory, and the balance of such purchase price in the five months immediately following, in equal instalments. 5012

G. No party hereto shall sell any goods in the territory of the other; and if, for any reason, goods should be shipped into the other's territory, either directly or through branch houses of any concern, 20% of the net prices thereof shall belong to the party in whose territory the goods are to be sold.

XI. In consideration of one dollar to him in hand paid by the said Messrs. Chapman, the receipt whereof is hereby acknowledged, the said Arthur A. Waterman hereby covenants and agrees with the said Isaac E. Chapman and William L. Chapman, their heirs, executors, administrators and assigns that in the event of his connection with this said firm of A. A. Waterman & Co. being severed in any way, he will not, either directly or indirectly, connect himself with any person, company or firm engaged in business similar to, or competing with, that of this partnership, (except as herein provided), nor will he himself (except as herein provided) engage in any business that will 5013

5014 compete with the business of this partnership, for a period of thirty-six years from the date hereof; and that he will not use, or authorize and permit any other persons, firm or corporation to use, the name of Waterman or A. A. Waterman, in any way or manner in connection with the manufacture, purchase or sale of fountain pens, other than as contemplated by this agreement: that is to say, if this agreement is terminated, the said Arthur A. Waterman hereby covenants with said Isaac E. Chapman and William L. Chapman, not to compete, either directly or indirectly, in the manufacture, purchase or sale of fountain pens or to use his own name, or to permit his name to be used in any such competing business, except as herein provided.

XII. If said Waterman shall not avail himself of the privilege
5015 of engaging in business independently in the western territory, he shall have the exclusive agency for that territory during the thirty-six year term of this partnership, excepting only Mexico and Central America. Said Waterman shall receive commissions on all sales and shipments to the Canadian portion of said territory, ten per cent (10%); on all sales and shipments to the said territory located within the United States, twenty per cent (20%), except that upon sales and shipments of items sold other than as modern pens, so-called, the commission rate shall be ten per cent (10%), and except that on fountain pens wholesaled at fifty cents each or less, no commission shall be paid. Provided, however, that if the sales and shipments to that part of said territory located in the United States shall amount,
5016 in one year, to more than $45,000, the rates of commission on the sales and shipments in excess of said $45,000 in said United States territory shall be one-half the aforesaid rate, and provided further that if the total sales and shipments in said United States territory for any year is less than $30,000, then the said Waterman shall receive a commission of only fifteen per cent (15%), upon the business of that year on which he otherwise would have received twenty per cent (20%); and provided further that if in any one calender year the sales of said Waterman's field shall be less than $20,000, then his other partners, or the Modern Pen Company, shall have the right to send salesmen into the said western territory at the expense of said Waterman, such

expense not to exceed Waterman's commissions from the State or States occupied by such salesmen while they are employed therein, and for one year thereafter. 5017

The provisions of this paragraph XII, shall bind the heirs, executors, administrators and assigns of the parties hereto, and this firm shall make no agreement relative to sales agents not in conformity with the terms of this paragraph.

XIII. Said Waterman is to pay all his traveling expenses, also any salary and expenses or commissions paid with his approval to any assistant working in his field under his direction; also for any pens given to any individuals at his, or his representatives' instance in said field, the gifts being charged as if cash, at 20% of the retail or list prices if the names and addresses of recipients are supplied.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written. 5018

ARTHUR A. WATERMAN (Seal)
ISAAC E. CHAPMAN (Seal)
WM. L. CHAPMAN (Seal)

Witness:
Alex. S. Bacon.

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## Defendant's Exhibit A-14.

THIS AGREEMENT, made and entered into at the City of New York, this fifth day of July, 1905, between the Modern Pen Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, party of the first part, and Arthur A. Waterman, of Winchester, Massachusetts, party of the second part, Witnesseth: 5019

WHEREAS, the firm of A. A. Waterman & Co., composed of Arthur A. Waterman, Isaac E. Chapman, and William L. Chapman, and formed by articles of copartnership entered into by said copartners upon the 12th day of June, 1905, has for its purpose the manufacture of pens, fountain pens and parts thereof, etc., and the said firm or co-partnership has engaged the afore-

5020 said Modern Pen Company as the sole and exclusive sales agent for all of the goods to be manufactured by the said firm; and the said Modern Pen Company is desirous of securing the services of the said Waterman and of carrying out that portion of his agreement with his said partners whereby there is reserved to said Waterman certain exclusive territory,

Now, THEREFORE, in consideration of One Dollar ($1) each to the other in hand paid, the receipt whereof is hereby acknowledged, and other valuable considerations, it is hereby mutually agreed between the parties hereto as follows:

I. The said copartnership agreement is hereby referred to, and the Modern Pen Company hereby acknowledges full knowledge of all the terms of said agreement. Nothing in this agree-
5021 ment shall be deemed or construed to interfere with the said Waterman carrying out all the terms and conditions of said copartnership agreement and entering into business for himself if he may so desire, in the terms and in the manner as indicated in said copartnership agreement.

II. The Modern Pen Company hereby employs said Arthur A. Waterman as its agent to sell upon commission in the Western territory hereinafter described, all articles handled by it, and said Arthur A. Waterman hereby accepts said agency.

III. It is further mutually agreed that there shall be, and hereby is, set aside and exclusively appropriated to said Waterman as his exclusive sales territory, all that part of North
5022 America west of and excluding the Providence of Ontario; and that part of the United States west of and exclding the southern peninsula of Michigan, Indiana, Kentucky, Tennessee and Mississippi, and excluding the West Indian Islands and Porto Rico; and including Central America and Mexico.

IV. All net sales of goods made by the Modern Pen Company in said territory shall be deemed to be made and duly credited to the account of said Waterman, for the purpose herein provided, to wit: a commission is to be paid monthly to said Waterman upon the wholesale business done by the Modern Pen Company, in the said territory, not including retail mail business and business in repairs and exchanges; which said com-

mission shall be based on the sales and shipments to said territory, 5023
at the following rates of commission: on all sales and shipments to the portion of said territory not within the United States, ten per cent (10%); on all sales and shipments to the said territory located within the United States, twenty per cent (20%), except that upon sales and shipments of items sold other than as Modern pens, so-called, the commission rate shall be ten per cent (10%) and except that on fountain pens wholesaled at fifty cents each or less, no commission shall be paid; provided, however, that if the sales and shipments to that part of said territory located in the United States shall amount, in one year, to more than $45,000, the rates of commission on the sales and shipments in excess of said $45,000, in said United States territory shall be one-half the aforesaid rate; 5024
and provided further that if the total sales and shipments in said United States territory for any year is less than $30,000, then the said Waterman shall receive a commission of only fifteen per cent (15%) upon the business of that year on which he otherwise would have received twenty per cent (20%); and provided further that if in any one calendar year the sales in said Waterman's field shall be less than $20,000, then his other partners, or the Modern Pen Company, shall have the right to send salesmen into the said western territory at the expense of said Waterman; such expense not to exceed said Waterman's commissions; from the State or States occupied by such salesmen while they are employed therein, and for one year thereafter.

5025

V. Said Waterman is to pay all his traveling expenses; also any salary and expenses or commission paid with his approval to any assistant working in his field under his direction; also for any pens given to any individual at his instance in said field, the gifts being charged as if cash, at 20% of the retail or list prices, if the names and addresses of recipients are supplied.

VI. A consignment account is to be kept with said Waterman charging all samples and surplus stock having a retail list price, at 50% discount, and other samples, if any, at the lowest trade prices. If any merchandise is not accounted for on said con-

5026 signment account, any deficiency is to be charged to said Waterman quarterly as if cash paid to him, at the net consignment rates.

VII. Any assistant of said Waterman, approved by the Modern Pen Company, is to have consigned to him constantly suitable samples charged at the same rate as hereinbefore provided for the consignment of samples to said Waterman. But said Waterman shall not be held responsible for any samples furnished to any such assistant or their indebtedness to the Modern Pen Company.

VIII. Commissions are due and payable when the goods are shipped; if any goods are returned, commissions already collected or credited thereon shall be charged back.

5027

IX. It is further mutually agreed that during the continuance of this commission arrangement the said Waterman and his assistants may also represent any other person, firm or corporation, in said territory so far as he or they do not solicit business in competition with the business of the Modern Pen Company.

X. It is further mutually agreed and expressly understood that the continuance of the aforesaid commission arrangement in said exclusive western territory provided for by the said copartnership agreement is optional with said Waterman; that in the event that said commission arrangement is not terminated by the formation of an independent firm or corporation, as provided in said articles of copartnership, the said Waterman
5028 may, at his option, nevertheless, terminate the same at any time; and he may at any time withdraw from and cease to represent the Modern Pen Company in said territory, in which event he shall surrender said territory and all his rights and interests therein under this agreement.

XI. It is further mutually agreed that this agreement will be binding upon both parties hereto for the full term of thirty-six years of the aforesaid copartnership, unless the agreement is sooner terminated at the option of said Waterman as herein provided, or by said Waterman going into business for himself, or unless the said Modern Pen Company, party of the

first part, shall sooner cease to be the appointed selling agent of the said firm of A. A. Waterman & Co. 5029

XII. In the event that the said Waterman does engage in the separate and independent manufacture of fountain pens &c., in said western territory, then it is mutually agreed that all the restrictions and obligations of the said copartnership agreement shall likewise be binding upon the Modern Pen Company, to the benefit of Waterman, the same as if herein set forth at length, and the Modern Pen Company shall not sell, or permit or cause to be sold any goods in competition with said Waterman in said western territory; and all the restrictions and obligations of said copartnership agreement binding upon said Waterman, shall likewise redound to the benefit of the Modern Pen Company; and all the obligations imposed upon the Messrs. Isaac E. and 5030 William L. Chapman (the two other copartners in said copartnership) under the terms of said copartnership agreement shall be binding upon the Modern Pen Company.

XIII. It is further mutually agreed that if said Waterman shall engage in the independent manufacture and sale of fountain pens &c., in said western territory, as provided in the aforesaid articles of copartnership, then he, or any firm or corporation that may be organized for that purpose by him, shall purchase from the Modern Pen Company all show cases owned by it in said western territory, so far as they are in use by dealers for the display of Modern fountain pens in said western territory, paying for such show cases seventy-five per cent (75%) of what was paid therefor to the manufacturer, which purchase price shall 5031 be paid 50% when the proposed independent concern begins business in the western territory, and the balance of such purchase price in the five months immediately following, in equal installments.

XIV. It is expressly agreed that the said Waterman will not, during the continuance of the thirty-six year term of the said copartnership of A. A. Waterman & Co., engage in the manufacture and sale of fountain pens except as provided in the said articles of copartnership, and will not, during the term of thirty-six years, use, or permit the use of, his name in any manner,

5032 in any other firm or corporation engaging in the manufacture and sale of fountain pens except as provided in said articles of copartnership.

In Witness Whereof the Modern Pen Company, the party of the first part, has caused these presents to be signed by its president, and its corporate seal to be hereto affixed, and Arthur A. Waterman, the party of the second part has hereunto set his hand and seal the day and year first above written.

MODERN PEN COMPANY,
(Seal.) by Isaac E. Chapman, President.
Arthur A. Waterman, (Seal).

Witness:
Alex. S. Bacon.

5033

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## Defendant's Exhibit A-15.

A. A. Waterman I. E. Chapman W. L. Chapman

A. A. WATERMAN & CO.,

Makers of

"MODERN" FOUNTAIN PENS

Works and Sales Office
22 Thames St., New York.

5034 The Middle Joint and the Automatic Self-Filling "Modern" Fountain Pens TO THE TRADE:

Cable Address: "Modernpen" New York.

NEW PARTNERSHIP

The partnership, A. A. Waterman & Co., was dissolved on May 8, 1905, and on May 12, 1905, a new partnership was formed under the same name. The effect of this is to have Messrs. Isaac E. Chapman and William L. Chapman instead of Messrs. Wm. G. Frazer and Hobart W. Geyer as general partners, thus

adding greatly to the financial strength of the firm. The business is continued without interruption, and without changes except for some improved methods. 5035

This opportunity is taken to make the following statement:

The Messrs. Chapman have been for several years indirectly interested in the business of A. A. Waterman & Co. They have become in this way well acquainted with the prospects of this rapidly increasing business—also with financial needs due to its growth; and they are now partners in the new firm because of their large financial interests in the business and the great advantage that will come to it in several ways as a result of their active participation in its management.

The constant progress in improving the quality and styles of our fountain pens which has been the "hobby" of Mr. Waterman for years will be maintained; indeed, it will be advanced in every possible way. We shall remain the foremost fountain pen manufacturers—especially in point of novelty in construction, quality of material and finish of product. The new firm will manufacture the best fountain pens that large capital and the highest skill can produce. Its manufacturing equipment and the ability of its staff of organizers, managers and salesmen will preclude the possibility either of supplying inferior goods that less fully equipped makers must be content with; or of failing to give the Trade *attractive business propositions.* 5036

To improve still further the service of A. A. Waterman & Co. in the distribution of its products to the Trade, there has been organized a separate Sales Corporation. With Mr. Waterman as an officer and director, this Selling Agency will have the benefit of his wide experience in a long connection with the Trade. 5037

We wish to thank our customers for their liberal past and present patronage and their many other expressions of interest in our business. We hope to merit and enjoy a continuance of this popularity and support by carrying out as liberal a trade policy as is consistent with uniform and safe business methods.

A. A. WATERMAN & CO.

5038 **Defendant's Exhibit A-16.**

Royal Ideal Pens sold J. Saadi.

| Sold | No. 11 | No. 12 | No. 14 | No. 15 |
|---|---|---|---|---|
| 1909 | | | | |
| July 10th | 72 | 144 | 72 | 24 |
| Oct. 13th | 72 | 72 | 216 | 48 |
| Dec. 4th | 144 | 144 | 144 | 36 |
| | 288 | 360 | 432 | 108 |

Returned

Feb. 19th 1910 155 No. 12 gold pens, 30¢ 46.50
24 " 15 " " 50¢ 12.00

5039 58.50

| | | Sold at | | Cost | | Profit | | |
|---|---|---|---|---|---|---|---|---|
| 288 | No. 11 holders | 14-1/2¢ | 41.76 | 12¢ | 34.56 | 7.20 | | |
| 360 | " 12 " | 18¢ | 64.80 | 17¢ | 61.20 | 3.60 | | |
| 432 | " 14 " | 14-1/2¢ | 62.64 | 13¢ | 56.16 | 6.48 | | |
| 108 | " 15 " | 23¢ | 24.84 | 19¢ | 20.52 | 4.32 | | |
| | | 21.60 | | | | | | |
| | | | 194.04 | | 172.44 | | | 21.60 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 288 | No. 11 | Gold pens | 21¢ | 60.48 | 18¢ | 51.84 | 8.64 | | |
| 5040 360 | " 12 | " " | 30¢ | 108.00 | 24¢ | 86.40 | 21.60 | | |
| 432 | " 14 | " " | 21¢ | 90.72 | 20¢ | 86.40 | 4.32 | | |
| 108 | " 15 | " " | 50¢ | 54.00 | 32¢ | 34.56 | 19.44 | 54.00 | |
| | | | | 313.20 | | 259.20 | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Less | 155 | No. 12 | Gold pens | 30¢ | 46.50 | 24¢ | 37.20 | 9.30 | | | |
| | 24 | " 15 | " " | 50¢ | 12.00 | 32¢ | 7.68 | 4.32 | 13.62 | | 40.38 |
| | | | | | 58.50 | | 44.88 | | | | |
| | | | | | 254.70 | | 214.32 | | | | |

| | | | |
|---|---|---|---|
| 1188 Boxes & Fillers 2¢ | 23.76 | 2¢ | 23.76 |

Profit

Less paid commission to salesmen 10%

Less 10% office expenses

| | |
|---|---|
| Bill July 10th '09 Royal Ideals | 144.00 |
| " Oct. 13th '09 " " | 180.00 |
| " Dec. 4th '09 " " | 207.00 |
| | 531.00 |
| Credit Feb. 19th '10 " " G. Pens | 58.50 |
| | 472.50 |

This profit of $21.60 on the holders does not take into consideration the fact that a large part—or nearly all, of the holders imprinted "Royal Ideal Pen" had that imprint removed by Mr. Saadi, before their sale.

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## Defendant's Exhibit A-18.

Cleveland, O. 11-10-09.

Mr. H. Geyer,

Dear Sir:

I was very much surprised when I noticed this insertion in this eve. paper. I thought I would send it to you and also wish you would advise me. I have not been served yet and I don't know what to make of it. I hope you will stand by me in this matter or I will have to stop handling your goods.

5044 Let me know what you think of this or don't it amount to anything?

Hoping to hear from you soon, I remain

Yours truly,

S. TELLER,
411 Euclid Ave.,
Cleveland, O.

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**Defendant's Exhibit A-17.**

New York, November 11, 1909.

5045 Standard Drug Company,
411 Euclid Ave., Cleveland, O.

Gentlemen:

In the suit of L. E. Waterman Company against you filed on November 10th, in the United States Circuit Court for your District, we beg to advise that we shall be pleased to supply you or your attorneys with a copy of the complaint upon the entrance of your appearance in the case and your request for same.

We also further beg to notify you that the representation of a globe on fountain pens is a duly registered trade-mark of the L. E. Waterman Company and we find that you are advertising fountain pens under the name of "Globe Special." We have
5046 advised our clients that this constitutes unfair competition in trade and we notify you to forthwith discontinue the use of same.

The trade-mark above referred to was registered by the L. E. Waterman Company on February 4, 1902, No. 37,762 and re-registered under the new law on December 19, 1905, No. 48,-230, and May 1, 1906, No. 51,993.

Yours truly,

(Signed) WATSON & RAYMOND,
10 Wall Street.

SSW/FB.

**Defendant's Exhibit A-19.** 5047

Nov. 12, 1909.

Mr. S. Teller,
411 Euclid Ave.,
Cleveland, O.

Dear Sir:

Your letter of the 10th inst., enclosing clipping, received and contents have our attention.

You say you have not yet been served with any notice of the suit and until you have this we cannot, of course, tell what the suit is for. If you have been advertising our pens without the initials A. A. Waterman, the other people might possibly sue 5048
you for this but in all our experience this is the first case in which we have heard of their starting a suit. Many of our customers have received threatening letters from the attorneys of the L. E. Waterman Co., and we are inclined to think that this item of news may be a mistake.

If they are suing you to prevent you using pens imprinted A. A. Waterman & Co. advertised as such, we will certainly defend the case for you.

As soon as you get any further information in regard to this, please let us know and we will then take it up with our attorneys.

Yours truly,
THE MODERN PEN CO.,
Hobart W. Geyer,
Ass't. Treas. 5049

Dict. to N. H.

5050 **Defendant's Exhibit A-20.**

STANDARD DRUG COMPANY

Cleveland, Nov. 12th, 1909.

Modern Pen Co.,
22 Thames St.,
New York City.

Gentlemen:

As you have been informed by Mr. Teller suit has been brought against us by the L. E. Waterman Company of New York as it is in our store that Mr. Teller has been selling your pens. This is the first intimation we have had that there was
5051 any question of his right to sell your pens. We would like to hear from you at once regarding the legal status of your company, and as to the truth or error of their allegations in bill of complaint (copy enclosed).

We are also sending you letter just received from their attorneys. It is but natural to expect that you will stand back of us in the defense of this suit.

Kindly return papers to us as soon as you have gone over them.

Very truly yours,
THE STANDARD DRUG CO.,
per Perin Shirley,
Secy.-Treas.

5052

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**Defendant's Exhibit A-21.**

Nov. 18, 1909.

The Standard Drug Co.,
East Ninth S. & Boliver Road,
Cleveland, Ohio.

Dear Sirs:

Your letter of the 12th inst. with enclosure received, and contents have our attention.

There is no question whatever of Mr. Teller's or anybody else's right to sell our pens providing they are sold as pens made by A. A. Waterman & Co. If you or Mr. Teller, as the L. E. Waterman Co. claim, have been selling pens not of their make as manufactured as "Waterman's Ideal Fountain Pens," "Waterman's Pens," "genuine Waterman Ideal Fountain Pens," "genuine Waterman's Pens," "Waterman's Fountain Pens" and "Waterman Fountain Pens;" have caused those to whom you have sold such pens to believe that the said fountain pens so sold by you are "Waterman's Ideal Fountain Pens," and "Waterman's Fountain Pens," "Waterman Fountain Pens" and "Waterman Pens" made by the L. E. Waterman Co. when in fact such pens so sold by you were not made by them and were not of their manufacture; and thereby infringed their trade-marks and deceived the purchasers of the fountain pens sold by you and fraudulently secured to yourselves the profits rightfully belonging to the L. E. Waterman Co. to their great detriment and damage and deceived the purchasers of said fountain pens, you of course have been doing what you had no right to do and there is nothing that we can do to help you in this matter. 5053 5054

If, however, you have been selling the goods made by us and distinctly stating or advertising that they are pens made by A. A. Waterman & Co., we will do the right thing in protecting you and ourselves against unjust interference.

Please give us the necessary information in regard to the manner in which the goods have been advertised and sold, and we will then take the matter up further with you. 5055

We return herewith the letter from Messrs. Watson & Raymond and copy of complaint.

Yours truly,
THE MODERN PEN CO.,
Hobart W. Geyer,
Ass't. Treas.

Dict. to N. H.

5056 **Defendant's Exhibit A-32.**

C. A. GODMAN, President

C. E. ROSEMAN
Vice-President

PERIN SHIRLEY,
Secretary-Treasurer

THE STANDARD DRUG COMPANY

WHOLESALE DRUGGISTS

East Ninth Street and Bolivar Road

Cleveland, Nov. 18th, 1909.

The Modern Pen Co.,
22 Thames St.,
5057 New York City.

Gentlemen:

We are somewhat surprised in not receiving from you an acknowledgment of our letter enclosing bill of complaint of L. E. Waterman Co. We fully expected to hear from you yesterday, as we wish to know where you and we stand in this matter.

Kindly let us hear from you and oblige,

Yours very truly,
THE STANDARD DRUG CO.,
per Perin Shirley,
Secy.

5058 MODERN PEN CO.,
Received
Nov 20 1909
a. m. p. m.
7-8-9-10-11-12-1-2-3-4-5-6
†

## Defendant's Exhibit A-22.

5059

Nov. 19th, 1909.

The Modern Pen Co.,
22 Thames St.,
New York City.

Gentlemen:

Your favor received today and Mr. Teller is writing you setting forth the facts regarding the sale of your pens in our store by him. He will go on the witness stand and swear that he has not misrepresented the facts to customers.

Kindly let us know how we are to proceed in this matter.

Yours very truly,
THE STANDARD DRUG CO., 5060
per Perin Shirley,
Secy.-Treas.

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## Defendant's Exhibit A-23.

Cleveland, 11-19-09.

Mr. H. Geyer.

Dear Sir:

The Standard Drug referred your letter to me and in reply will say that as far as L. E. Waterman Ideal Pens is concerned, I have sold them and still sell them but of course if I can influence a prospective buyer to take A. A. Wat. goods I do so 5061
and I also want to say that I sell a very few of the Ideal Pens because of my efforts on your goods. As far as selling your goods and claiming that they were Ideal Pens, I will state emphatically that their claim is not true. I take their course as a matter of persecution and not prosecution simply unjust interference. I have sold lots of goods and never misrepresented anything.

Yours truly,

S. TELLER,
411 Euclid Ave.,
Cleveland, O.

5062 **Defendant's Exhibit A-24.**

Nov. 23, 1909.

Mr. S. Teller,
411 Euclid Ave.,
Cleveland, O.

Dear Sir:

Your letter of the 19th inst. received and we are writing the Standard Drug Co. by this mail.

While an appearance will have to be made in Court, we do not imagine for an instant that the L. E. Waterman Co. will push any suits as they certainly have no grounds to stand on.

5063 Yours truly,
THE MODERN PEN CO.,
Hobart W. Geyer.
Ass't. Treas.

Dict. to N. H.

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**Defendant's Exhibit A-25.**

Nov. 23, 1909.

The Standard Drug Co.,
East Ninth St. & Bolivar Road,
5064 Cleveland, Ohio.

Dear Sirs:

Your letter of the 19th inst. and also letter from Mr. Teller of the same date, received and contents have our attention.

From what Mr. Teller writes, he has been selling the Ideal pens as well as our own and if he has any of the Ideals he certainly has a perfect right to advertise them. We can not see wherein the L. E. Waterman Co. have any case at all from the information given us, and there seems to be nothing in their complaint that covers the goods that we make.

You might let us know what it will cost for you to engage an attorney to put in an appearance for you and we will probably be willing to pay a limited amount towards such expense. 5065

As we wrote you above, we can not see that this suit is caused by Mr. Teller having sold our goods, but we are willing to do what is right in the matter.

Yours truly,
THE MODERN PEN CO.,
Hobart W. Geyer,
Ass't. Treas.

Dict. to N. H.

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**Defendant's Exhibit A-33.** 5066

T. H. BUSHNELL,

ATTORNEY AT LAW,

705 Society for Savings Building,

Telephone, Main 2174

Cleveland, Ohio, December 1st, 1909.

Modern Pen Company,
22 Thames Street,
New York, N. Y.

Gentlemen: 5067

I have been retained by The Standard Drug Company, in a case filed here in United States Court against it, by L. E. Waterman Company, and have before me your letter of Nov. 18th to the Drug Company. Of course as you know, the pen business in the store belongs to Mr. Sol Teller; the Drug Company simply rents him space. I find in the window rented to Mr. Teller by the Drug Company, a lot of signs as follows:

"No. 8 Reliable made by A. A. Waterman & Co., $3.00"

"The Modern Middle Joint Pen, made by A. A. Waterman & Co."

5068 "The New Lincoln Model, made by A. A. Waterman & Co."
"Waterman Ideal, Parkers, Moore, Safety, Holland & C."

I also saw in the window a single pen box marked "L. E. Waterman (globe with word Ideal) Fountain Pen." Mr. Teller says he has sold the L. E. Waterman pen, buying odd lots of them, if he finds a bargain. I saw no advertisement of L. E. Waterman goods except as stated herein, and did see there a L. E. Waterman Ideal pen case. The A. A. Waterman & Co. pens appear to be plainly marked A. A. Waterman & Co. on each pen box. Is there such a person as A. A. Waterman and if so, has he been in the fountain pen business long, if so how long? Did he ever part with the use of his name, to be used in this business? Do you suggest that Mr. Teller drop your A. A.
5069 Waterman & Co. goods? What do you advise as to the matter? The Drug Company feels that it is not the party to be sued even if any one should be and don't like to assume the burden of defending unless properly indemnified.

Very truly,

T. H. BUSHNELL.

Answer O. K. W.
H. W. G.
W. W. M.
N. H.
E. A. P.
A. H. H
Order
5070 Credit
Repair
Exchange
Cash
B'keeper

MODERN PEN CO.,
Received
Dec-2 1909
a. m. p. m.
7-8-9-10-11-12-1-2-3-4-5-6

## Defendant's Exhibit A-34.

5071

Dec. 2, 1909.

Mr. T. H. Bushnell,
705 Society for Savings Bldg.,
Cleveland, Ohio.

Dear Sir:

Your letter of the 1st inst. received and contents have our attention.

As we wrote your clients, we do not see where the L. E. Waterman Co. have any kind of a case against them and from what you state we are still of the same opinion.

In 1898 before A. A. Waterman had a connection with this 5072
Company he allowed the L. E. Waterman Co. to get a judgment against him by default, but the judgment distinctly stated that he had a perfect right to use his name, A. A. Waterman or Arthur A. Waterman, or A. A. Waterman & Co. or Arthur A. Waterman & Co., which is, as we understand it, common law. In 1905 Mr. Waterman formed a co-partnership with Messrs. Isaac E. and William L. Chapman, President and Treasurer of the Modern Pen Co., under the firm name of A. A. Waterman & Co., with a provision therein that he could withdraw from the firm at the end of the year, he giving the firm the right to use the name A. A. Waterman & Co. or A. A. Waterman, which right still holds good.

Mr. A. A. Waterman was employed by the L. E. Waterman 5073
Co. for a number of years until along about 1895 when he went into business in Boston, Mass., using the name of A. A. Waterman Pen Co. After retiring from the firm of A. A. Waterman & Co. in New York, Mr. Waterman went to Chicago and formed a corporation organized under the laws of Arizona, known as A. A. Waterman & Co., Inc. Within the last year Mr. Waterman was withdrawn from the Chicago Company and is now with the Held Pen Co. of Salt Lake City, Utah.

If it is necessary for you to have a copy of the co-partnership agreement with Messrs. Chapman, we will be pleased to get it and send it to you.

5074 Any other information you wish we will be only too pleased to give you if in our power.

Yours truly,
THE MODERN PEN CO.,
Hobart W. Geyer,
Ass't. Treas.

Dict. to N. H.

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**Defendant's Exhibit A-26.**

411 Euclid Avenue,
old Arcade,
5075 Cleveland, O., 12-15; 1909.

H. Geyer,
The Modern Pen Co.

Dear Sir:

On Dec. 14th the L. E. Waterman Co. enjoined the Standard Drug Co. of this city from selling or allowing to be sold in their store Fountain Pens made under the name of A. A. Waterman & Co. The Standard Drug compels me to discontinue selling your goods or displaying any placards in window or in the store. What do you think about that. Consequently I must ask you to cancel the orders I have sent you for goods and also want
5076 to return all the A. A. Pens I have on hand for credit to my account in consequence of this injunction. You will readily see to what extent this injunction will interfere with my business at this time of the year as the Standard Drug Co. insist that I discontinue the sale of your goods in their store, on account of the unnecessary expense and trouble that they have already been put to on account of L. E. Co. actions.

Kindly let me hear from you or advise me, and oblige,

Yours truly,
S. TELLER.

**Defendant's Exhibit A-27.** 5077

Dec. 17, 1909.

Mr. S. Teller,
411 Euclid Ave.,
Cleveland, Ohio.

Dear Sir:

Your letter of the 15th inst. received, and this is the first intimation we had that the L. E. Waterman Co. were able to get an injunction against the Standard Drug Co. selling our goods.

We would like to have you furnish us with some of the particulars if you will, so that we can decide on what course to 5078
pursue in the matter.

As you will be unable to sell our goods, you of course can return whatever of them you have on hand and we will give you credit for same.

Yours truly,
THE MODERN PEN CO.,
Hobart W. Geyer,
Ass't. Treas.

Dict. to N. H.

5079

5080 **Defendant's Exhibit A-28.**

UNITED STATES CIRCUIT COURT,

EASTERN DIVISION OF THE NORTHERN DISTRICT OF OHIO,

In Equity.

L. E. WATERMAN COMPANY,
Complainant,

against

STANDARD DRUG COMPANY,
Defendant.

5081

To the Honorable, the Judges of the Circuit Court of the United States for the Eastern Division of the Northern District of Ohio:

The L. E. Waterman Company, a corporation duly incorporated, organized and now existing under the laws of the State of New York, and a citizen of said State, having its principal place of business at No. 173 Broadway, in the City of New York, County and State of New York, in the Southern District of New York, brings this, its bill of complaint against the Standard Drug Company, a corporation incorporated, organized and now existing under the laws of the State of Ohio,
5082 and a citizen of the State of Ohio, having its principal place of business in the City of Cleveland, in Cuyahoga County, State of Ohio, and carrying on business at No. 411 Euclid Avenue, in said City of Cleveland and at No. 11211 Prospect Avenue, N. E., in said City of Cleveland, State of Ohio.

And your orator thereupon complains and says:

I. That the L. E. Waterman Company, your orator, is a corporation incorporated, organized and now existing under the laws of the State of New York, with its principal place of business at No. 173 Broadway, in the City, County and State of New York, and is a citizen of the State of New York; that

your orator is informed and believes, and therefore alleges, that 5083
the defendant, Standard Drug Company, is a corporation incorporated, organized and now existing under the laws of the State of Ohio, and a citizen of the State of Ohio, having its principal place of business in the City of Cleveland, in Cuyahoga County, State of Ohio, and carrying on business at No. 411 Euclid Avenue, in said City of Cleveland and at No. 11211 Prospect Avenue, N. E., in said City of Cleveland, State of Ohio.

II. That in the year 1883 one Lewis E. Waterman was engaged in the business of manufacturing and selling fountain pens in the said City of New York, and in the year 1883 adopted as his trade-mark for fountain pens manufactured and sold by him the word "Waterman's" and the words "Waterman's Ideal Fountain Pen, N. Y.," and in connection with the manufacture 5084
and sale by him of fountain pens used and continued to use continuously until the year 1887 and until he was succeeded in said business by your orator, the said trade-marks in commerce among the several States of the United States and in commerce between the United States and foreign nations to denote and designate to the public the fountain pens so manufactured and sold by him.

III. That in the year 1887 your orator, the L. E. Waterman Company, was incorporated and organized as a corporation under the laws of the State of New York and thereupon succeeded to the business and all rights of the said Lewis E. Waterman in and to said trade-marks "Waterman's" and "Waterman's Ideal Fountain Pen, N. Y.," and all rights, interests and prop- 5085
erty of the said Lewis E. Waterman in the business of the manufacture and sale of fountain pens, as aforesaid; that your orator has continued the said business of manufacturing and selling fountain pens since the year 1887 continuously until the present time; that in connection with the said manufacture and sale of fountain pens and for the purpose of more clearly distinguishing the goods of their manufacture from those of other manufacturers, your orator and its predecessor, the said Lewis E. Waterman, continuously from the year 1883 to the present time, stamped and labeled fountain pens made by them with said trade-mark "Waterman's" and "Waterman's Ideal Fountain Pen, N.

5086 Y.;" and continued from the year 1883 to the present time the use of said trade-mark, stamped, labeled and affixed to the fountain pens of their manufacture for the purpose of more clearly distinguishing the goods of their manufacture from those of other manufacturers.

IV. That on the 5th day of February in the year 1901, your orator duly registered in the United States Patent Office its said trade-mark "Waterman's Ideal Fountain Pen, N. Y.," as a trade-mark for fountain pens under and in accordance with the United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that on the 6th day of February, in the year 1906, your orator duly registered in the United States Patent
5087 Office its said trade-mark "Waterman's Ideal Fountain Pen, N. Y.," as a trade-mark for fountain pens under and in accordance with United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that on the 15th day of January, in the year 1907 your orator duly registered in the United States Patent Office its said trade-mark "Waterman's" as a trade-mark for fountain pens under and in accordance with United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that your orator is now the owner and entitled to the exclusive use as a trade-mark for fountain pens of said trade-marks "Waterman's" and "Waterman's Ideal
5088 Fountain Pen, N. Y.;" that your orator and its predecessor in business have since the year 1883 continuously until the present time, applied and affixed to fountain pens of its manufacture and to the boxes in which said fountain pens were sold the said trade-marks, "Waterman's" and "Waterman's Ideal Fountain Pen, N. Y.," and has extensively used the said trade-marks in advertising and selling said pens; that your orator has invested and expended large sums of money in the manufacture and sale of its fountain pens bearing said trade-marks and improving and perfecting the same, and that it has sought in many ways and by a large expenditure of money exceeding the sum of Two hundred fifty thousand ($250,000) Dollars, to popularize said

fountain pens and to advertise the same under said trade-marks, and because of the superior quality, workmanship and material of said fountain pens of your orator's manufacture bearing said trade-marks, your orator's trade therein increased from year to year and assumed large proportions until thousands of said fountain pens bearing said trade-marks were annually sold by your orator, the same being a source of great profit to your orator and a benefit to the public; that your orator further shows unto your Honors, that the said trade-marks "Waterman's" and "Waterman's Ideal Fountain Pen, N. Y.," applied and affixed to fountain pens of its manufacture, as aforesaid, came to be widely known and widely and generally recognized by dealers therein and by the public generally as indicating and distinguishing the goods of your orator's manufacture which were widely and generally known as "Waterman's Ideal Fountain Pens," "Waterman Ideal Fountain Pens," "Waterman Pens," "Waterman's Pens," "Waterman's Ideal Pens," "Waterman Ideal Pens," "Waterman Fountain Pens" or "Waterman's Fountain Pens," and that the said dealers and the public generally relied upon said trade-marks stamped and affixed upon said pens and upon the boxes in which they were contained as indicating that the goods so stamped and marked were of your orator's manufacture and they were thereby assured that the goods so stamped and marked were reliable and superior in quality, material and workmanship and were in fact "Waterman's Ideal Fountain Pens" or "Waterman's Pens" or "Waterman Fountain Pens," and the public having become familiar with such goods, and the quality, material and workmanship thereof, called for and purchased the same by asking for the fountain pens of your orator's manufacture as "Waterman's Ideal Fountain Pens" or "Waterman Ideal Fountain Pens" or "Waterman Pens," or "Waterman's Pens," or "Waterman's Ideal Pens," or "Waterman Ideal Pens," or "Waterman Fountain Pens," or "Waterman's Fountain Pens."

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V. And your orator further shows unto your Honors that it is informed and believes, and therefore alleges, that the defendant, Standard Drug Company, was and for some time has been and still continues to be engaged in the business of selling

5092 fountain pens at No. 411 Euclid Avenue and at No. 11211 Prospect Avenue, N. E., in said City of Cleveland, State of Ohio, and that said defendant has made sales of fountain pens not of your orator's manufacture, as "Waterman's Ideal Fountain Pens," "Waterman's Pens," "Genuine Waterman Ideal Fountain Pens," "Genuine Waterman's Pens," "Waterman's Fountain Pens" and "Waterman Fountain Pens;" that the said defendant has caused those to whom he has sold such pens, as aforesaid, to believe that the said fountain pens so sold by him, as aforesaid, are "Waterman's Ideal Fountain Pens," and "Waterman's Fountain Pens," "Waterman Fountain Pens" and "Waterman Pens," made by your orator, when in fact such pens so sold by the defendant, as aforesaid, were not made by your
5093 orator and were not of your orator's manufacture and that thereby the defendant infringed your orator's said trade-marks and deceived the purchasers of the fountain pens sold by him, as aforesaid, and that the defendant thereby fraudulently secured to himself the profits rightfully belonging to your orator, to your orator's great detriment and damage and deceived the purchasers of said fountain pens and that the defendant is still continuing the business and practice of selling fountain pens bearing the said trade-marks and trade names of your orator and colorable imitations thereof, which fountain pens are not of your orator's manufacture and wilfully threatens to continue said illegal and unlawful acts to the great injury and damage of your orator's reputation and business and to the great injury and damage of
5094 your orator's good name and trade-marks; that your orator is informed and believes and therefore alleges that the defendant has notice and full knowledge of your orator's rights in the premises, but defendant in defiance of your orator's rights wilfully continues its illegal and unlawful acts and persists in infringing your orator's trade-marks and continuing his illegal and unlawful acts, as above set forth, and continues unlawfully and illegally to use your orator's said trade-marks and trade name and colorable imitations thereof in offering to the public and in selling fountain pens which are not of your orator's manufacture and the defendant is thereby deceiving the public and injuring the good name and good will of your orator's business to your orator's great detriment, injury and damage.

And your orator further shows unto your Honors that the fountain pens which the defendant is advertising, offering for sale and is selling under the false representation that they are "Waterman's Ideal Fountain Pens," "Waterman's Fountain Pens," or "Waterman's Pens," are not of your orator's manufacture and are inferior to the "Waterman's Pens," "Waterman Fountain Pens" and "Waterman's Ideal Fountain Pens," of your orator's manufacture in utility, appearance, style, workmanship and material, and their inferiority in these particulars taken in connection with their fraudulent substitution for the goods of your orator, has damaged and continues to damage the reputation of your orator's fountain pens among the trade and public generally, and your orator does not know the full extent of the damages thus suffered, but states, upon information and belief, that the sum exceeds, exclusive of interest and costs, the sum of Ten thousand Dollars ($10,000). 5095 5096

VI. That the amount in controversy in this cause is of more than Two thousand Dollars ($2,000) in value, exclusive of interest and costs.

VII. And your orator further charges that the actions of the defendant, as aforesaid, are contrary to equity and good conscience and constitute an unlawful, fraudulent, unfair and inequitable competition in business, and an invasion and infringement of your orator's rights in the premises and of your orator's registered trade-marks, whereby it has been deprived of and has lost the sale of pens which have been sold by the defendant as "Waterman's Pens," or "Waterman's Fountain Pens," or "Waterman's Ideal Fountain Pens," which pens were not of your orator's manufacture, all to your orator's great and irreparable loss and injury, and by which your orator has been and still is being deprived of profits which it might and otherwise would have obtained but which have been received and enjoyed, and still are being received and enjoyed by the defendant by reason of his unlawful acts, as aforesaid; and your orator further charges that the actions of the defendant, as aforesaid, have caused and are still causing great and irreparable injury and damage to your orator's reputation and good name, and great damage and injury among the trade and public generally to the 5097

5098 reputation and good name of "Waterman's Pens," "Waterman's Fountain Pens," and "Waterman's Ideal Fountain Pens," of your orator's manufacture.

Forasmuch as your orator can have no adequate relief except in this Honorable Court and to the end, therefore, that the defendant may, if it can, show why your orator should not have the relief hereby prayed, and may make full disclosure and discovery of all the matters aforesaid and according to the best and utmost of his knowledge, remembrance, information and belief, full, true and perfect answers make to the matters hereinbefore made, stated and charged, but not under oath, answer under oath being hereby expressly waived;

To the end, therefore, that your orator may obtain relief in the premises and forasmuch as your orator has no adequate
5099 rememdy at law and can obtain no adequate relief except in this Honorable Court, it humbly prays:

That the said defendant, Standard Drug Company, its servants, agents, attorneys and workmen and each and every one of them, may be restrained and enjoined provisionally and perpetually by an order and injunction of this Honorable Court, from:

1. Directly or indirectly making or causing to be made, selling or causing to be sold, offering for sale or advertising any fountain pens of other manufacture than that of your orator under the name of "Waterman's Ideal Fountain Pen, N. Y.," or "Waterman's Ideal Fountain Pen," or "Waterman's Foun-
5100 tain Pens," or "Waterman's Pens," or "Waterman Pens," or any mark or name in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or to deceive purchasers.

2. Directly or indirectly selling or causing to be sold, offering for sale or advertising fountain pens of other manufacture than that of your orator representing the same to be of your orator's manufacture.

3. Using in connection with the business of making or selling fountain pens on such fountain pens, whether on the gold pen

or any part of the fountain pen, or on labels, signs, letterheads, billheads, circulars, prints, advertisements, boxes, packages, receptacles, wrappers or in any manner whatsoever, the word "Waterman," "Waterman's," "Waterman Pen," "Waterman's Pen," "Waterman Ideal Pen," "Waterman's Ideal Pen," "Waterman Ideal Fountain Pen," "Waterman's Ideal Fountain Pen," "Waterman's Ideal Fountain Pen, N. Y.," or the word "Waterman's," "Waterman" alone, or the word "Waterman" or "Waterman's," or any imitation or simulation thereof (whether the same be or be not coupled with other names or initials) in collocation with the word "pen" or "fountain pen" (whether the same be or be not coupled with some further descriptive word or words), or the name "Waterman" in any form, or any name in imitation or simulation thereof, as to indicate that the fountain pens so made or sold are a variety of "Waterman's Pens," or "Waterman Fountain Pens," or "Waterman's Ideal Fountain Pens, N. Y.," made by your orator. 5101 5102

That the said defendant may be decreed to deliver up any and all fountain pens, labels, signs, prints, packages, wrappers or receptacles in the possession of the defendant bearing the trade-mark of your orator or any reproduction, counterfeit, copy or colorable imitation thereof and that this Honorable Court may order the same destroyed.

That the said defendant may be decreed to render a full, true and perfect account and to pay unto your orator all the profits obtained by it by reason of its aforesaid wrongful acts and the damages thereby suffered by your orator including the damages sustained by your orator by its loss of trade and also the damages done to the good name and good will of your orator's said business and to the reputation of its said "Waterman's Pens," or "Waterman Fountain Pens," or "Waterman's Ideal Fountain Pen, N. Y.," including three times the amount of the actual damages suffered by your orator on account of the use by the defendant in connection with the sale of fountain pens of any reproduction, counterfeit, copy or colorable imitation of your orator's said trade-mark, and also the costs of this suit. 5103

That your orator may have such other and further relief as to this Honorable Court may seem meet, equitable and just.

5104 May it please your Honors to grant unto your orators a writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this Honorable Court, commanding, enjoining and restraining the said defendant, Standard Drug Company, its servants, agents, attorneys and workmen and each and every one of them, as is hereinbefore in that behalf prayed.

May it please your Honors to grant unto your orator the writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said defendant, Standard Drug Company, commanding it on a certain day and under a certain penalty to be and appear in this Honorable Court then and there to answer the premises and to stand to and abide such order and decree as may be made against him.

And your orator will every pray, etc.

5105 Dated, New York, October 9th, 1909.

L. E. WATERMAN COMPANY,
By Frank D. Waterman,
President.

Watson & Raymond,
Solicitors for Complainant,
No. 10 Wall Street,
New York City, New York.
Samuel S. Watson,
Of Counsel.

State of New York,
City and County of New York, } ss.:
5106 Southern District of New York,

Frank D. Waterman, being duly sworn, deposes and says: That he is the President of the complainant herein; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the said complainant is a corporation and the reason why this application is not made by the complainant is because of that fact. That deponent's knowledge and the grounds for his information and belief are derived from his participation

in the management of the business of said complainant as its President. 5107

FRANK D. WATERMAN.

Sworn to before me this
9th day of October, 1909.
Victor C. Cormier,
Notary Public,
New York County.
(Notarial Seal.)

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## Defendant's Exhibit A-29.

The United States of America, }
Northern District of Ohio, } ss.: 5108
Eastern Division, }

At a stated term of the Circuit Court of the United States, within and for the Eastern Division of the Northern District of Ohio, begun and held at the City of Cleveland, in said District, on the first Tuesday in October, being the 5th day of said month, in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States of America, the one hundred and thirty-fourth, to wit: on Tuesday, the 14th day of December, A. D. 1909.

Present: Honorable Robert W. Tayler,
United States District Judge. 5109

Among the proceedings then and there had were the following, to wit:

5110 UNITED STATES CIRCUIT COURT,

IN AND FOR THE EASTERN DIVISION OF THE NORTHERN DISTRICT OF OHIO.

In Equity.

| | |
|---|---|
| L. E. WATERMAN COMPANY, Complainant, against STANDARD DRUG COMPANY, Defendant. | No. 7898. |

5111 A motion for a writ of permanent injunction this day by consent coming on to be heard upon the bill of complaint, the affidavits in support of said motion, and the exhibits attached and filed therewith, after hearing Samuel S. Watson, Esq., of counsel for the complainant, and Thomas H. Bushnell, Esq., of counsel for the defendant, and after due consideration and deliberation had, it is

ORDERED, ADJUDGED AND DECREED, that a writ of permanent injunction issue enjoining the defendant, Standard Drug Company, a corporation under the laws of the State of Ohio, its officers, agents, servants, employees and all persons taking or holding, under, from or through it from:

5112 (1) Infringing the complainant's trade-mark "Waterman's Ideal Fountain Pen, N. Y.," and infringing the complainant's trade-mark "Waterman's," and from manufacturing or selling fountain pens (other than fountain pens of complainant's manufacture) having the said trade-marks, or either of them on such fountain pens whether on the holder or on the gold pen, or on labels, boxes, signs, letterheads, bill-heads, circulars or advertisements, accompanying or used in connection with the making or selling of such fountain pens, or in any manner whatsoever;

(2) Using in connection with the business of making or selling fountain pens, (other than fountain pens of complainant's manufacture), whether on the holder or on the gold pen or on labels, boxes, signs, letterheads, billheads, circulars or advertisements or in any manner whatsoever, the word "Waterman," "Waterman's" or "Waterman's" alone, or the word "Waterman," "Waterman's" or "Watermans's" whether the same be or be not coupled with the initials "A. A.," or whether or not the same be or be not used in collocation with the word "pen" or "fountain pen"; 5113

(3) Using the name "A. A. Waterman & Co.," or any corporate name containing the word "Waterman," or "Waterman's" or "Watermans's" in connection with the manufacture or sale of fountain pens, unless accompanied by words which conspicuously, clearly and unmistakably distinguish such corporate name from that of the complainant; 5114

(4) Selling, representing or advertising in any manner whatsoever fountain pens (other than fountain pens of complainant's manufacture) as "Waterman Pens," "Waterman's Pens," "Waterman Fountain Pens," "Waterman's Fountain Pens," "Watermans's Fountain Pens," or using any other word which would indicate that the fountain pen so sold, represented or advertised are fountain pens of complainant's manufacture.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the complainant recover its costs to be taxed by the clerk.

TAYLER, 5115
United States District Judge.

The United States of America, ss.:

I, Irvin Belford, Clerk of the Circuit Court of the United States, within and for the Northern District of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original Order entered upon the Journal of the proceedings of said Court in the therein entitled cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

5116 Witness, my official signature and the seal of said Court, at Cleveland, in said District, this 14th day of December, A. D. 1909, and in the 134th year of the Independence of the United States of America.

IRVING BELFORD,
Clerk.
By R. C. Dean,
Deputy Clerk.

(Seal.)

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## Defendant's Exhibit A-30.

5117 To all Whom it May Concern:

Notice is hereby given, that infringement of our trademarks and trade names is enjoined by the United States Circuit Court as appears from the injunction, a copy of which is hereby served upon you. All persons found indulging in unfair trade practices in violation of the terms of the injunction will be vigorously proceeded against.

L. E. WATERMAN CO.,
173 Broadway,
New York, N. Y.

Watson & Raymond, Attorneys,
10 Wall Street,
5118 New York, N. Y.

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## Defendant's Exhibit A-31.

State of New York, } ss.:
County of New York, }

Isaac E. Chapman and William L. Chapman do hereby certify that they are conducting or transacting the business of manufacturing and selling fountain pens and the parts thereof, and other articles, at #22 Thames Street, in the County of New

York and State of New York, its principal place of business, under the name of 5119

A. A. WATERMAN & CO.

and that the true or real full names of the persons conducting or transaction such business with the post-office addresses of said persons are as follows:

| Name | Residence & Post Office Address |
|---|---|
| Isaac E. Chapman, | 4 Tennis Court, Brooklyn, N. Y. |
| William L. Chapman, | 289 Hancock St., Brooklyn, N. Y. |

Said firm of A. A. Waterman & Co. has business relations with foreign countries and has transacted business in this State for more than three years; said firm formerly consisted of Arthur A. Waterman, Isaac E. Chapman and William L. Chapman; said Arthur A. Waterman has retired therefrom, and said business is continued under the firm name of A. A. Waterman & Co. under the terms of their written contract, and the same business is now conducted at the same place, under the same name, by the said Isaac E. Chapman and William L. Chapman, as sole partners therein. 5120

Dated, New York City, February 4th, 1910.

ISAAC E. CHAPMAN.
WM. L. CHAPMAN.

County of New York, ss.:

On this 4th day of February, 1910, before me personally came Isaac E. Chapman and William L. Chapman, to me known, and known to me to be the individuals described in and who executed the foregoing certificate, and they duly severally acknowledged to me that they executed the same. 5121

V. M. TURNER,
Notary Public,
New York County.

5122 **Defendant's Exhibit A-85.**

L. E. WATERMAN COMPANY

Limited,

136 St. James St., Montreal.

Montreal, January 13th, 1910.

Mr. Arthur J. Ryan,
Frederickton, N. B.

Dear Sir:

5123 We have received through our Clipping Bureau, a copy of your advertisement reading "A Fountain Pen Snap. All guaranteed. Selling at $1.00, $1.25 and $1.50. Waterman's Self Filling Pens for $2.00 to $5.00. Everybody knows this pen. Ink Pencils at $1.00. (Signed) Central Pharmacy, Arthur J. Ryan."

To advertise any other fountain pens than those stamped "Waterman's Ideal Fountain Pen," as a Waterman, is a violation of our trade-marks and patent rights, and we are fully protected under Canadian Patents and Trade-marks, and so that you may better understand our position, we are enclosing herewith a copy of a recent decision referring to the trade-marks of our pens.

Possibly you have been misled in the purchasing of a stock of pens, as those of ours, and before referring the matter to

5124 our attorneys, we thought it best to write you, and await your reply.

Yours very truly,
L. E. WATERMAN COMPANY, Limited.

## Defendant's Exhibit A-36.

5125

New York, N. Y., February 1st, 1910.

M. 1083

Mr. George M. Hammell,
Walnut Hills,
Cincinnati, Ohio.

Dear Sir:

We are in receipt of your letter of Jan. 27th, addressed to A. A. Waterman & Co., New York and wish to inform you that as there is no such concern in New York City, your letter was delivered to us and as your fountain pen is not manufactured by us, we would suggest your writing to the Modern Pen Co., 22 5126
Thames St., New York City, who are the selling agents for this fountain pen.

Trusting the above information will be of assistance to you, we remain

Yours very truly,

L. E. WATERMAN CO.

W. R.

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## Defendant's Exhibit A-37.

BANK NOTE DEPARTMENT 5127

F. C. DUNEMACHER PRESS

Louisville, Ky.

June 22nd, 1910.

A. A. Waterman Co.,
New York City.

Gentlemen:

Under date of June 16th, I sent you letter as per the enclosed carbon. Today I received the enclosed letter and the pen re-

5128 ferred to returned by the L. E. Waterman Pen Co. I am not interested in a Waterman Ideal. I cannot understand how L. E. Waterman should have received your letter which very plainly was addressed to you and why they should have opened it and not delivered it to you for answer but have taken the liberty to write me and return the pen when you are both located in New York City. I do not feel that this shows business courtesy and I realize that I am a very small frog in a great big pond but this action on the part of the L. E. Waterman Co. would be enough for me not to desire any of their goods.

Please advise me as to my letter of the 16th and greatly oblige.

Yours very truly,
C. H. DUNGAN

5129 M

(Stamped): Modern Pen Co., Received June 25 1910.
7-8-9-10-11-12 1-2-3-4-5-6

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**Defendant's Exhibit A-38.**

June 25, 1910.

Mr. C. H. Dungan,
Louisville, Ky.

Dear Sir:

5130 Your letter of the 22nd inst. with enclosure and pen received and we are indeed sorry that you have had so much trouble on account of this pen going astray. Since the pen left our place a different make of gold pen was put in the holder and we presume this was done by the L. E. Waterman & Co. We therefore send you an entirely new pen in place of same and trust this one will prove to be satisfactory to you, if not please let us know and we will be pleased to send you one-half dozen pens to select from so that you will be able to get a pen that suits your hand.

Yours truly,
MODERN PEN CO.
Hobart W. Geyer,
Asst. Treas.

## Defendant's Exhibit A-39.

5131

| Ideals | | Modern Self-filling. | Modern Middle Joint |
|---|---|---|---|
| No. 12 | $2.50 match our | No. 30 $2.50 | No. 32 $2.50 |
| No. 13 | $3.50 " " | No. 40 $3.00 | No. 42 $3.00 |
| No. 14 | $4.00 " " | No. 50 $3.50 | No. 52 $3.50 |
| No. 15 | $5.00 " " | No. 60 $4.00 | No. 62 $4.00 |
| No. 16 | $6.00 " " | No. 70 $5.00 | No. 72 $5.00 |
| No. 17 | $7.00 " " | No. 80 $6.00 | No. 82 $6.00 |
| No. 18 | $8.00 " " | | |

Discount to the Trade.

5132

| L. E. Waterman Co. | A. A. Waterman & Co. |
|---|---|
| Less than 12 pens 33-1/3% | 1 to 35 pens 40% |
| 12 or over 40% | 36 to 71 " 40% and 5% |
| Rebate on quantities, | 72 to 143 " 40% and 10% |
| | 144 or more 50% |

| Ideals | | A. A. W. & Co. End Joint Line |
|---|---|---|
| No. 12 | $2.50 matches our | No. 303 $1.50 |
| No. 13 | $3.50 " " | |
| No. 14 | $4.00 " " | No. 503 $2.00 |
| No. 15 | $5.00 " " | No. 603 $2.50 |
| No. 16 | $6.00 | No. 703 $3.00 |
| No. 17 | $7.00 | No. 803 $3.50 |
| No. 18 | $8.00 | |

5133

Discount to the Trade.

| | |
|---|---|
| Less than 12 pens 33-1/3% | 50% on any quantity |
| 12 or over 40% | |
| Rebate on quantities | |

## Defendant's Exhibit A-40.

5134

A. C. TUCKER,

JEWELER AND OPTICIAN.

Watches, Clocks and Jewerly.

27 South Avenue.

Fine Watch, Clock and Jewelry Repairing.

Whitman, Mass., April 4, 1910.

D. C. Percival & Co.,
373 Washington St.,
5135 Boston, Mass.

Dear Sirs:

In reply to yours of April 1st, I would say that I made no statement to Mr. Chaplin that you were selling me the A. A. Waterman pen and representing them to be Ideal goods. Also, no Salesman has misrepresented the goods in any way.

Yours truly,
AMERSEE C. TUCKER.

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## Defendant's Exhibit A-41.

5136

CONSENT TO SALE OF THE ASSETS

FRAZER & GEYER COMPANY

To the Reorganization Committee

The undersigned, owners of the respective common, first preferred and second preferred stock of the Frazer & Geyer Company, set opposite their names, hereby consent that all of the assets, property, rights, privileges, patents and franchises of said Company be sold to the Modern Pen Company, or new company with some similar name, upon the terms and conditions following:

Whereas, the assets and liabilities of the Frazer & Geyer Company, as shown by the Company's books on April 1, 1905 (except good will and capital stock), are as follows: 5137

ASSETS

| | |
|---|---|
| Cash | $566.93 |
| Machinery | 15,569.27 |
| Patents | 15,455.34 |
| Royalty | 4,364.49 |
| Insurance | 255.00 |
| Accounts Receivable | 60,161.45 |
| Merchandise | 17,791.62 |
| | $114,134.10 5138 |

LIABILITIES

| | |
|---|---|
| Notes Payable | $41,620.67 |
| Accounts Payable | 3,864.58 |
| | $45,485.25 |

The said new Company shall pay over to the Frazer & Geyer Company, in consideration of said assets and the good will of the Company, and $18,500 in cash, or such other sum as the Committee on Reorganization may fix, 1255 shares of the capital stock of said new Company, and said new Company is to assume 5139 the liabilities of the Frazer & Geyer Company above set forth (and without prejudice to the chattel mortgages now covering said assets);

And the undersigned agree to pay over to said new Company the sum of $15 for each share of stock in the Frazer & Geyer Company now owned by him, or as much thereof as he or she wishes to protect.

It being understood that immediately upon said stock of said new Company being delivered to said Frazer & Geyer Company, it shall be distributed to the undersigned, one share of the common stock of the new Company for each share of either

5140 common, first preferred or second preferred stock of the Frazer & Geyer Company, and that the Frazer & Geyer Company shall thereafter be dissolved.

This consent and agreement is to be binding upon each subscriber thereto severally but not jointly.

Dated New York, April 26, 1905.

| NAME | NUMBER OF SHARES | | |
|---|---|---|---|
| | Common | First Preferred | Second Preferred |

5141

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**Defendant's Exhibit A-42.**

STATEMENT.

All bills not paid at maturity are subject to sight draft without notice.

New York, Apr 11 1911

Mr. Chas. E. Trory,
Crestline, Ohio.

(Cut)

5142

22 Thames Street—125 Greenwich Street.

| | | | |
|---|---|---|---|
| 1905. | | | |
| Oct. 26 | To Mdse | | 7 50 |
| Dec. 21 | " " | | 10 50 |
| 1906 | | | |
| Apr. 10 | " | Repair | 36 |
| May 14 | " | " | 15 |
| July 31 | " | " | 55 |
| Aug. 16 | " | Mdse | 12 90 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1907 | | | | | | |
| Jan. | 26 | " | Repair | | | 5143 |
| | | | | 35 | 32 31 | |

CREDITS.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1905 | | | | | | |
| Nov. | 23 | By | Check & Disc. | 7 50 | | |
| Dec. | 29 | " | " " " | 10 50 | | |
| 1906 | | | | | | |
| May | 11 | " | " | 36 | | |
| June | 7 | " | " | 15 | | |
| Aug. | 26 | " | " | 55 | | |
| | 25 | " | " | 12 64 | | 5144 |
| | 25 | " | " Disc | 26 | | |
| 1907 | | | | | | |
| Feb. | 28 | " | Credit, allowance | 35 | 32 31 | |

5145

Defendant's Exhibit A-43.

1716

5146

# LINCOLN FOUNTAIN PENS

(STYLE: LOWER JOINT.)

MADE BY **A. A. WATERMAN & CO.** NEW YORK.

SOLE SELLING AGENT, **MODERN PEN CO.** 22 THAMES ST., NEW YORK, U. S. A.

**These Pens Are of REMARKABLE Value. Compare OUR Prices With Those of EQUALLY HIGH-CLASS PENS of OTHER Makes.**

OPTIONS. { No. 103 PLAIN BLACK / No. 103 MOTTLED / No. 103 CHASED BLACK } ILLUSTRATION EXACT SIZE. SIZE OF GOLD PEN No. 1—14 KARAT. } LIST PRICE **$1.00**

OPTIONS. { No. 303 PLAIN BLACK / No. 303 MOTTLED / No. 303 CHASED BLACK } ILLUSTRATION EXACT SIZE. SIZE OF GOLD PEN No. 3—14 KARAT. } LIST PRICE **$1.50**

OPTIONS. { No. 503 PLAIN BLACK / No. 503 MOTTLED / No. 503 CHASED BLACK } ILLUSTRATION EXACT SIZE. SIZE OF GOLD PEN No. 5—14 KARAT. } LIST PRICE **$2.00**

## Defendant's Exhibit A-44.

5149

In the year of Nineteen hundred and ten and on the 2nd day of July in Milan,

At the instance of the L. E. Waterman Company of New York, in the person of its President Franz Waterman, who for the purpose of bringing the present proceedings elects Milan as his domicile, at the address of his lawyer Mr. Rodolfo Maroni, who will represent him in this suit.

I, the undersigned Judicial Officer of the Civil and Criminal Courts of Milan have summoned Mr. Guido Cabrini, resident of Milan, to appear before the Court of this town at the session which will be held at 11 o'clock A. M. on the 9th of this month, to answer in *re*: the Waterman Company known in the whole world as the first 5150
manufacturers of the stylographic pens known under the name of "Waterman Pens," having likewise registered this name which is the family name of the founder of the said firm and of the respective Industry.

For some time a certain Guido Cabrini, who calls himself the General Agent for Italy and Europe, of a firm of A. A. Waterman & Co., of New York, has put a very loud and showy advertisement on the fourth page of certain periodicals together with the picture of a pen bearing also the name of WATERMAN with the additional name "MODERN."

This action on the part of Mr. Cabrini infringes and injures all the rights in the premises of the plaintiff, viz: the above named company, because the name of WATERMAN be it as a 5151
family name or be it as a commercial name, or be it as a trademark, of the product of the complaining company, cannot be used by any competitors of said Company.

Furthermore, this name used by anybody but the complaining company constitutes a fraud and deception in business inasmuch as the said Cabrini by means of his advertisements makes the Public believe that the stylographic pen which he is selling is a more recent (modern) product of the already well known pen Waterman, made by the renowned New York firm of that name, and furthermore because no such firm as A. A. Waterman exists

5152 in New York which could be represented by Cabrini in Italy and in Europe.

Now therefore in view of the illegitimate use which the said Cabrini is making of the name of WATERMAN for the sake of competition and also for the sake of advertising.

And whilst the complaining Company reserves for itself the right to start also criminal proceedings against Cabrini as well as the numerous agents which he has appointed under the easy attraction of the usurped name, it asks the ILLUSTROUS COURT to reject any contradiction, exception and deduction, and to declare that it neither was nor is permitted to the said G. Cabrini to sell any stylographic pens under the name of Waterman, or to make use of that name and this commercial denomination as a trade-mark to designate the product of his busi-

5153 ness,

That it neither was or is permitted the said G. Cabrini for the sake of advertising or for any other reason to make use of the name of the "FIRM OF A. A. WATERMAN NEW YORK or WATERMAN—NEW YORK that being a false designation of a *firm which does not exist*, and consequently,

To order the seizure of all Stylographic pens bearing the name of A. A. WATERMAN NEW YORK or WATERMAN NEW YORK, whenever and wherever they should be located and found.

To condemn the said G. Cabrini to pay the damages sustained, by provisionally executive sentence.

Copy signed by me of this act left with Mr. G. Cabrini at his

5154 residence in Milan via Metastasio No. 3 and in his own hands. Modern Pen Co. Signed: Ranzi, Judicial Officer. July 12th.

## Defendant's Exhibit A-50.

5155

April 29, 1908.

L. E. Waterman Co.,
173 Broadway,
New York City.

Gentlemen:

I have been directed by my client, the Modern Pen Company, to bring an action against you for an infringement of their patents Nos. 523, 234 and 551, 895, in the manufacture of what you call a "safety fountain pen" as advertised in the "Cosmopolitan."

I presume that you have not yet manufactured many of these infringing pens and I call your attention to the matter of infringement presuming that it was inadvertent, and that you will discontinue such manufacture. 5156

Asking for an acknowledgment of this letter and a statement of your purposes in this matter, I remain

Yours very truly,

ALEXANDER S. BACON.

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## Defendant's Exhibit A-51.

April 30, 1908.

Mr. Alexander S. Bacon,
37-39 Liberty St.,
New York. 5157

Dear Sir:

We have your letter of April 29th regarding alleged infringement of two patents. We have called up our attorney but find he is out of the city. We will refer the matter to him as soon as he returns, and give you a further answer.

We beg to say that we had no idea of infringing anybody's rights, and if our attorney advises us that we are infringing we will immediately discontinue the same.

Yours truly,

L. E. WATERMAN COMPANY.

## Defendant's Exhibit A-55.

5158

May 19, 1908.

L. E. Waterman Co.,
Broadway & Cortland Street,
New York City.

Gentlemen:

I have not been favored with the promised further reply to my recent letter, calling your attention to certain infringements of patents owned by the Modern Pen Company.

Since the receipt of your letter promising to examine into the matter and advise me further, I notice that your advertisements
5159 have continued, and my client advises me further that you are infringing their patent Nos. 719,529 on "sleeve" type of Self-filler.

They also advise me that you are apparently infringing their patent 700,909.

Will you kindly give me at once the result of your examination in the matter, as I am instructed to bring suit.

Yours very truly,
ALEXANDER S. BACON.

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## Defendant's Exhibit A-56.

5160

May 21, 1908.

Mr. Alexander S. Bacon,
37 Liberty St.,
New York.

Dear Sir:

We have your letter of May 19, 1908, and in reply to it and your letter of April 29, 1908, we beg to say that relying upon the representations made by Mr. William L. Chapman whom we understood to be an officer of the Modern Pen Company, your client, that Mr. Chapman and his brothers had the control of

the Modern Pen Company and that terms of sale of all its assets acceptable to him and those associated with him had been arranged, and that formal corporate authorization of such sale was the only thing remaining to be done before it would be consummated *and relying on the fact that our Company would become a licensee under the patents transferred by the sale referred to, this Company began the manufacture of a safety fountain pen which is the one of which we assume you complain.* These negotiations of sale were still pending at the time we received your letter of April 29, 1908. We have since been informed that the proposed sale has failed because Mr. William L. Chapman and his associates did not have the control of the Modern Pen Company. As soon as we learned that these negotiations of sale had been broken off, we forthwith entirely discontinued the manufacture and sale of the safety fountain pen as then constructed and of which we assume you complain. Of the safety fountain pens of which we assume you complain only a few have been sold, probably less than a dozen. 5161 5162

By stopping the above mentioned action we do not wish it to be understood that we recognize the validity of the United States patents Nos. 523,234, 551,895 or 700,909, inasmuch as our attorneys advise us that all of these patents are, in their opinion, invalid because of prior existing patents and prior use of the structures shown and claimed in them. We are taking the course above indicated merely to avoid litigation and the trouble and expense incident thereto, as we feel we can devote our time to better advantage in attending to the immediate business of this Company than in litigation.

We are now using for our safety fountain pen a construction or structure which our predecessors in business used more than twenty years ago and which has been commonly and continuously used for pencils and fountain pens since 1852 and of which we assume you claim no monopoly. If you desire, we would be pleased to submit to you a sample of the safety fountain pen as we are now making and selling the same. We wish to repeat that we have entirely discontinued making and selling fountain pens of the structure of which we assume you complain, and that we do this merely to avoid litigation and not because we recognize the validity of the patents you claim to be infringed or 5163

5164 that the pen as made by us did actually infringe any of these patents.

Regarding patent No. 719,529, referred to in your letter of May 19, 1908, we are at an entire loss to know what style of pen made by us you can conceive infringes this patent. We make a number of styles of fountain pens; we have gone over all of them carefully and fail to discover any pen which in our opinion comes anywhere near infringing patent No. 719,529. If you will indicate to us what style of pen made by us you think infringes this patent, we will be glad to give the matter further consideration.

Yours truly,

L. E. WATERMAN CO.,

(Signed) F. D. Waterman, Treas.

5165

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**Defendant's Exhibit A-57.**

May 26, 1908.

L. E. Waterman Co.,
173 Broadway,
New York City.

Gentlemen:

Your favor of the 21inst. was duly received, stating that you have discontinued the manufacture of any pen that you think
5166 in any way infringes the patents of the Modern Pen Company, and also stating that "if you desire we will be pleased to submit to you a sample of the safety fountain pen as we are now making and selling the same."

We appreciate the politeness of your letter, and would esteem the favor if you would submit sample.

Yours very truly,

ALEXANDER S. BACON.

## Defendant's Exhibit A-45.

5167

March 5, 1908.

Mr. Samuel S. Watson,
c/o Watson & Raymond,
10 Wall St., City.

Dear Sir:

I beg to advise you that Mr. W. L. Chapman has been confined to his house, on account of illness, all this week and directed me to write you and state that he has made a thorough search for the copy of contract which you drew up for the Modern Pen Co. to buy out the Modern Pen Co., but has been unable to find same. Mr. Williams has also made a search for this contract, but cannot find it.

5168

Mr. Chapman would like to have you furnish him with another copy of this contract, so that he may take up this matter without further delay.

Yours very truly,

ROBERT ELLIOTT.

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## Defendant's Exhibit A-46.

New York, March 7, 1908.

W. L. Chapman, Esq.,
17 Battery Place,
New York City, N. Y.

Dear Sir:

5169

Upon my return this morning from a week's absence, I have your letter of March 5th, and regret to hear that you have been ill, but hope you are better and will soon be alright again.

I enclose you *office draft* of the contract, Modern Pen Company with Modern Pen Company which I made some time ago. I can quickly redraft this as soon as the points now under discussion have been determined. Will you kindly return the enclosed draft when you have finished with it as it is the only copy we have in the office.

Very truly yours,

SAMUEL S. WATSON.

SSW/LS

5170 **Defendant's Exhibit A-47.**

March 19, 1908.

Mr. Samuel S. Watson,
10 Wall St., City.

Dear Sir:

*I return herewith your draft* of proposed contract. I have made a copy of your form for our use.

As I explained over the telephone, I am unable to go further in this deal until the return of my brother, who is now in Bermuda.

Yours very truly,
WM. L. CHAPMAN.

5171 WLE/RE

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**Defendant's Exhibit A-58.**

Know all men by these presents that we, the undersigned, to wit: the Modern Pen Company, a corporation under the laws of West Virginia, Frazier & Geyer Company, a corporation under the laws of the State of New York, and A. A. Waterman & Co., a corpartnership, composed of Isaac E. Chapman and William L. Chapman, with principal place of business at No. 27 Thames
5172 Street, in the City, County and State of New York, parties of the first part, in consideration of the sum of Twenty-five thousand ($25,000) Dollars, to be paid to the parties of the first part by Aiken-Lambert Company, a corporation duly organized and now existing under the laws of the State of New York, party of the second part, the same to be paid Fve thousand dollars ($5,000) on the first day of February, 1908, Five thousand Dollars ($5,000) on the first day of March, 1908, Five thousand dollars ($5,000) on the first day of April, 1908, Five thousand dollars ($5,000) on the first day of June, 1908, and Five thousand dollars ($5,000) on the first day of August, 1908, have bargained, sold, granted, conveyed and transferred, and by these presents do hereby bargain, sell, grant, convey and transfer to the

said party of the second part, its successors and assigns, all office furniture, tools, machinery, equipment, fixtures, appurtenances, etc., of the office, pen shop and rubber shop of the parties of the first part, or either or any of them, contained in their offices, and shops at No. 27 Thames Street, in the City and State of New York, or elsewhere, of which a partial schedule is hereunto annexed; also all notes, Letters Patent and patent rights belonging to the said parties of the first part, of which a partial schedule is hereunto annexed; also all show cases and signs now belonging to the parties of the first part wherever the same may be situate, together with all rights thereto and therein belonging to the parties of the first part, or either or any of them; also *the name and good will* of the said Modern Pen Company, of said Frazier & Geyer Company and of *the firm name and good will of said A. A. Waterman & Co.*, and *all trade-marks and trade names of the parties* of the first part, or either or any of them, together with the exclusive right to use the said corporate names, said firm name, said trade-marks and said trade names, or either or all of them to the full extent as the said parties of the first part, or either or any of them, could or might use the same had this grant, sale and assignment not been made; also all advertising matter, stationery, books, files, records, etc., of the parties of the first part, or either or any of them; it being the purpose and intent of the parties of the first part by this instrument to bargain, sell, grant, convey and transfer to the said party, of the second part, its successors and assigns, all of the assets and property of every kind and nature of the said parties of the first part, and each and all of them, wherever the same may be situated, whether now owned by the said parties of the first part, or either or any of them, or hereafter acquired by them, or either or all of them, prior to February 1st, 1908, except the following which are expressly reserved to the parties of the first part, to wit: all cash on hand, all merchandise accounts receivable, all gold pens and parts, all fountain pens and parts whether the same are finished or in process of manufacture, all raw material now in hand or hereafter provided for the manufacture of gold pens, fountain pens or appurtenances thereto, all fountain pen boxes, clips and ink in hand or which may hereafter be provided to carry on the business of the parties of

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the first part, as herein set forth, up to the first day of February, 1908;

To have and to hold the same unto the said party of the second part, its successors and assigns forever, and the parties of the first part hereby covenant and agree with the said party of the second part to *warrant and defend* the said described property, trade-marks and trade names hereby sold unto the said party of the second part, its successors and assigns, against all and every person, firm, corporation or association whatsoever, and the parties of the first part and each of them further covenant and agree not to engage in the manufacture or sale of gold pens or fountain pens, appurtenances thereto or parts thereof, in any part of the world, either directly or in association, connection or conjunction with any other person, persons, firm, association or corporation, or through or by holding any interest whatsoever, either directly or indirectly, in any concern, firm, association or corporation engaged in the making or selling of gold pens or fountain pens, appurtenances thereto or parts thereof, on and after the first day of February, 1908, provided and excepted only that the parties of the first part shall be free to sell such gold pens and fountain pens, appurtenances thereto or parts thereof, which they or either of them may *have on hand* on the first day of February, 1908, it being agreed and understood that such gold pens and fountain pens, appurtenances thereto or parts thereof, which the parties of the first part may have on hand on the first day of February, 1908, *shall be sold or disposed of* prior to the first day of April, 1908, and that on and after April 1, 1908, the parties of the first part, or either of them, shall cease absolutely, both directly and indirectly, as hereinbefore set forth, to engage in the manufacture or sale of gold pens or fountain pens, appurtenances thereto or parts thereof; it being understood and agreed, however, that such books, files, and records of the parties of the first part, or either of them, may be required by them in closing up and collecting the merchandise accounts receivable may be used for such purpose by the parties of the first part pending the settlement and collection of said accounts.

It is further covenanted and agreed by the parties of the first part and each of them that the said described goods hereby sold,

together with the names, good will, trade-marks and trade names of the said parties of the first part shall be turned over and delivered to the party of the second part on the first day of February, 1908, free and clear of all liens, claims or encumbrances whatsoever, and the said parties of the first part and each of them hereby covenant and agree to make such further and additional assignments or conveyances as may be necessary or proper to complete the absolute sale, transfer and delivery of said described property, names, trade-marks and trade names hereby sold to the party of the second part, including all necessary and proper assignments properly and duly acknowledged of each and all of said Letters Patent and patent rights, the same to be executed by the said parties of the first part, or either or all of them, to complete the absolute assignment of all of said Letters Patent and patent rights to the party of the second part. 5179 5180

It is further hereby agreed and understood by and between the parties hereto that the net amount of said notes hereby assigned and sold which may be collected by or for the account of the party of the second part, its successors and assigns shall be turned over and paid to said

In witness whereof all the parties hereto have hereunto set their hands and seals this day of December, 1907.

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## Defendant's Exhibit A-59.

5181

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned, to wit: The Modern Pen Company, a corporation under the laws of West Virginia, Frazier & Geyer Company, a corporation under the laws of the State of New York, and A. A. Waterman & Co., a copartnership, composed of Isaac E. Chapman and William L. Chapman, with principal place of business at No. 27 Thames Street, in the City, County and State of New York, parties of the first part, in consideration of the sum of Twenty-five Thousand, ($25,000.00) Dollars, to be paid to the parties of the first part by *Modern Pen Company, a corporation incor-*

5182 *porated and organized under the laws of the State of New York*, party of the second part, the same to be paid Five Thousand Dollars ($5,000.00) on the first day of February, 1908, Five Thousand Dollars ($5,000.00) on the first day of March, 1908, Five Thousand Dollars ($5,000.00) on the first day of April, 1908, Five Thousand Dollars ($5,000.00) on the first day of June, 1908, and Five Thousand Dollars ($5,000.00) on the first day of August, 1908, have bargained, sold, granted, conveyed and transferred, and by these presents do hereby bargain, sell, grant, convey and transfer to the said party of the second part, its successors and assigns all office furniture, tools, machinery, equipment, fixtures, appurtenances, etc., of the office, pen shop and rubber shop of the parties of the first part, or either or any of them, contained in their offices and shops at No.
5183 27 Thames Street, in the City and State of New York, or elsewhere, of which a partial schedule is hereunto annexed; also all notes, Letters Patent and patent rights belonging to the said parties of the first part, of which a partial schedule is hereunto annexed; also all show cases and signs now belonging to the parties of the first part wherever the same may be situated, together with all rights thereto and therein belonging to the parties of the first part, or either, or any of them; *also the name and good will of* the said Modern Pen Company, of said Frazier & Geyer Company, *and of the firm name and good will of said A. A. Waterman & Co.*, and all trade-marks and trade names of the parties of the first part, or either or any of them, together with the exclusive right to use the said corporate names, said firm name,
5184 said trade-marks and said trade names, or either or all of them, to the full extent as the said parties of the first part, or either or any of them could or might use the same had this grant, sale and assignment not been made: also all advertising matter, stationery, books, files, records, etc., of the parties of the first part, or either or any of them: it being the purpose and intent of the parties of the first part by this instrument to bargain, sell, grant, convey and transfer to the said party of the second part, its successors and assigns, all of the assets and property of every kind and nature of the said parties of the first part, and each and all of them, wherever the same may be situated, whether now owned by the said parties of the first part, or either or any of

them, or hereafter acquired by them or either or any of them prior to February 1, 1898, except the following which are expressly reserved to the parties of the first part, to wit: All cash on hand, all merchandise accounts receivable, all gold pens and parts, all fountain pens and parts whether the same are finished or in process of manufacture, all raw material now in hand or hereafter provided for the manufacture of gold pens, fountain pens or appurtenances thereto, all fountain pen boxes, clips and ink now in hand or which may hereafter be provided to carry on the business of the parties of the first part, as herein set forth, up to the first day of February, 1908; 5185

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever, *and the parties of the first part hereby covenant and agree to and with the said party of the second part that they are the owners of the above described property, trade-marks and trade names and have good right to sell the same and that they and each of them will warrant and defend the same free and clear of all claims, liens or encumbrances of every kind whatsoever,* unto the said party of the second part, its successors and assigns, and against all and every person, firm, corporation or association whatsoever, and the parties of the first part and each of them further covenant and agree not to engage in the manufacture or sale of gold pens or fountain pens, appurtenances thereto or parts thereof, in any part of the world, either directly or in association, connection or conjunction with any other person, persons, firm, association or corporation, or through or by holding any interest whatsoever, either directly or indirectly, in any concern, firm, association, or corporation engaged in the making or selling of gold pens or fountain pens, appurtenances thereto or parts thereof, on and after the first day of February, 1908, provided and excepted only that the parties of the first part shall be free to sell such gold pens and fountain pens, appurtenances thereto or parts thereof, which they or either of them may have on hand on the first day of February, 1908, it being agreed and understood that such gold pens and fountain pens, appurtenances thereto or parts thereof, which the parties of the first part may have on hand on the first day of February, 1908, shall be sold or disposed of prior to the first day of April, 1908, and that on and after April 1, 1908, the parties of the first 5186 5187

5188 part, and all and each of them shall cease absolutely both directly and indirectly, as hereinbefore set forth to engage in the manufacture or sale of gold pens or fountain pens, appurtenances thereto or parts thereof: it being understood and agreed, however, that such books, files and records of the parties of the first part, or either of them, as may be required by them in closing up and collecting the merchandise accounts receivable may be used for such purpose by the parties of the first part pending the settlement and collection of said accounts.

It is further covenanted and agreed by the parties of the first part and each of them that the said described goods hereby sold, together with the names, good will, trade-marks, and trade names of the said parties of the first part shall be turned over and
5189 delivered to the party of the second part on the first day of February, 1908, free and clear of all liens, claims or encumbrances whatsoever, and the said parties of the first part and each of them hereby covenant and agree to make such further and additional assignments or conveyances as may be necessary or proper to complete the absolute sale, transfer, and delivery of said described property, names, trade-marks and trade names hereby sold to the party of the second part, including all necessary and proper assignments properly and duly acknowledged of each and all of said Letters Patent and patent rights, the same to be executed by the said parties of the first part, or either or all of them to complete the absolute assignment of all of said Letters Patent and patent rights to the party of the second part, and the said parties of the first part covenant and warrant that no
5190 licenses or shop rights to operate or manufacture under said patents or any of them, have been given or granted by the parties of the first part or either or any of them, to any person, persons, firm, corporation or association whatsoever except as contained in a certain contract made with one Arthur A. Waterman and dated a copy of which contract is attached hereto, referred to and made a part hereof.

It is further hereby agreed by and between the parties hereto, that the net amount of said notes hereby assigned and sold (a schedule of which is hereto attached) which may be collected by or for the account of the party of the second part, its successors and assigns, shall be turned over and paid to said William L.

Chapman, as trustee, and the said party of the second part as a part of the consideration of this contract hereby covenants and agrees to institute and prosecute in good faith such legal proceedings as it may be advised by its counsel to be proper in the premises to enforce the collection and payment of said notes hereby assigned and sold, but such legal proceedings shall be wholly at the joint and several cost and expense of the said parties of the first part, provided however, the parties of the first part, or either of them, may institute and prosecute in their own names and at their own expense, such proper legal proceedings as may be necessary to enforce the collection and payment of said notes, and if the parties of the first part, or either or any of them within sixty (60) days after the date hereof, shall institute and continue to prosecute in good faith such proper legal proceedings to enforce the collection and payment of said notes, then and in that event, the party of the second part shall not be required under the terms of this contract to begin any legal proceedings to enforce the collection and payment of said notes but shall be wholly released from the obligations so to do. 5191 5192

IN WITNESS WHEREOF all the parties hereto have hereunto set their hands and seals this day of December, 1907.

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## Defendant's Exhibit A-48.

New York, March 28, 1908. 5193

Mr. Samuel S. Watson,
Watson & Raymond,
10 Wall Street,
New York City.

Dear Sir:

The Directors Meeting which I spoke of was held today and there was a strong opposition of the disposing of the pen business at so ridiculous a figure as we have been talking about. However, I succeeded in maintaining the amount of $25,000.00.

The question of the disposing of the merchandise and closing business on September 1st was voted down because they were not

5194 sure of being able to dispose of the merchandise to advantage by that time.

The best terms now, under present circumstances, that will be entertained will be to dispose of the plant and merchandise on May 1st, paying for the plant $25,000.00 and the merchandise, raw, in course of manufacture, finished and returned, at their cost.

Unless your folks are willing to purchase on these terms, it is useless to continue negotiations further.

The directors have given me until Tuesday evening to have this matter decided. Would you be good enough to advise me one way or the other by that time so that I may advise them promptly.

Very truly yours,

5195 WM. L. CHAPMAN.

FH/WLC.

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**Defendant's Exhibit A-49.**

New York, March 30, 1908.

William L. Chapman, Esq.,
17 Battery Place,
New York, N. Y.

Dear Sir:

5196 We have your letter of March 28, 1908, and have submitted the same to the other parties who have instructed me to say that it is agreeable to them to call all negotiations off. The proposition you now present, as you know, has already been considered by the other parties and they do not wish to reconsider that proposition. As your associates have refused to authorize the proposition we have been discussing and as the other parties do not care to entertain the one now proposed by you, there seems nothing to do but to consider all negotiations off.

Yours truly,

WATSON & RAYMOND.

SSW/LS.

## Defendant's Exhibit A-52.

5197

May 7, 1908.

Mr. Samuel S. Watson,
10 Wall Street, City.

Dear Sir:

I brought up the question of selling the Pen business at the Director's meeting yesterday afternoon and after a controversy over the matter, I can name you the following: $30,000 for the plant, patents &c., as per our previous negotiations, including the new plant purchased since the inventory. All merchandise on hand at its inventory cost, and merchandise returned from customers after contract is signed, at prices invoiced to said 5198
customers.

It is understood that you will assume the lease for the present premises occupied by the Company, which we have renewed for another year.

Yours truly,

WM. L. CHAPMAN.

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## Defendant's Exhibit A-53.

New York, May 8, 1908.

William L. Chapman, Esq., 5199
17 Battery Place,
New York, N. Y.

Dear Sir:

I have your letter of May 7, 1908, in re pen business. The proposition you present is impossible, as, of course, you must have known when it was presented.

You have repeatedly represented to me that you were in a position to consummate any proposition which met with your approval, and acting on the strength of your statements I have spent a great deal of time on this matter only to find when we did

5200 agree that you were unable to carry out the proposition. Therefore, I ask you to consider this incident finally closed.

Yours truly,

SAMUEL S. WATSON.

SSW/AL.

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**Defendant's Exhibit A-54.**

17 Battery Place,
New York, May 11, 1908.

Samuel S. Watson, Esq.,
5201 10 Wall Street, City.

Dear Sir:

I acknowledge receipt of yours of the 8th inst.

I take exception to the last part of your letter in which you state that I represented I could consummate anything that met with my approval. I represented to you that between my brothers, myself and the friends we had interested, that we had the majority of the stock; and I would call your attention to the fact that we have never agreed upon any proposition, only the amount of consideration at the time it was made, and not on the other conditions.

I had this matter well in line and could have had the approval
5202 of our friends, *if you had been reasonable in the time for disposing of the product.* The negotiations pending so long, the Company found that they were obliged to increase their plant since inventory was made, consequently a request for an additional amount was perfectly in order.

Yours truly,

WM. L. CHAPMAN.

WLC/RE

**Defendant's Exhibit A-60. Thirty-nine Letters of Commendation.** 5203

Flat Rock, N. C., June 22nd, 1910.

A. A. Waterman Pen Company,
New York City.

Gentlemen:

Cannot find a firm in Hendersonville, N. C., that handles your pen, all have the L. E. or "Ideal." Bought one of them over a year ago, changed twice then exchanged with a party that had bought one of yours the Modern; found it the best pen I ever owned; lost it a few days ago, want another one. Please give me the best price for one by mail, also price of repairs for same. 5204

Yours truly,

(Signed) GRANT ARLEDGE.

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PEARL STREET BAPTIST CHURCH,

Providence, R. I.

Rev. J. A. Hainer, Pastor,
Residence, 49 Arch Street.

July 21st, 1910.

The Modern Pen Company,

Gentlemen: 5205

Pen just received, and it is in fine shape. That was one on me in neglecting to sign the check. You see I had no pen. It is all right now, sorry to necessitate your returning it. I think you have the world beat on pens. I have used this constantly for seven or eight years.

Cordially,

(Signed) J. A. HAINER.

5206

43 Exchange Place,
New York, July 22nd, 1910.

Messrs. A. A. Waterman & Co.

Gentlemen:

I have used constantly for over three years two of your Modern Self-filling pens. I do a great deal of writing. Until my wife dropped one of them the other day, they have done splendid service. If they were sold for double the price of any fountain pen I have yet seen, I would purchase yours because of my satisfactory experience with the "Modern."

Yours truly,

(Signed) C. L. COHN.

5207

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Letterhead.

318 Bradbury Bldg.,
Los Angeles, Cal., July 29th, 1910.

Modern Pen Co.,
New York.

Dear Sirs:

I duly received the new #6 pen which is satisfactory, execpt that I like a finer point, such as the one I have been using. I must use this one for a little while until you can return my old one which I am sending you.

5208

By concurrent mail, I am sending you my old No. 6 to have it reshaped or whatever it needs to restore it to what it was.

I have used this pen for several years and it never failed me until a few months ago, when the points got bent in some way. I often hand it to a man to sign his name in my presence and it was after one such time that I found it out of shape. I put it back into its present condition myself, but it is not right.

Kindly correct the condition and return to me at your earliest convenience and then I will return the pen for a finer pointed one. You might set aside the one you will send me from this old one as a sample.

Thanking you for attention to my wants,

Yours truly,

(Signed) FOSTER MACGURN.

Letterhead. 5209

992 Madison Ave., City, Aug. 18, 1910.

A. A. Waterman & Co.,
22 Thames St., City.

Gentlemen:

I am desirous of purchasing one of your automatic self-filling pens, but it is quite impossible for me to get down to your salesroom. Is there a place in this neighborhood where I can get one or have you a salesman up here? Or perhaps a catalogue would do if you issue them.

Have been using one of your pens for the past five years, probably you remember repairing it for me last month, and I 5210
am so pleased with the pen that I wish to get one for a friend, a trimmed one, silver or gold bands, &c.

Hoping you can find some way of supplying me with the pen, I am,

Respectfully yours,
(Miss) CHARLOTTE F. WETTERER.

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Orangeburg, S. C., Aug. 23rd, 1910.

A. A. Waterman & Co.,
New York.

Gentlemen: 5211

Under separate cover I am mailing you my pen for repair. Please put it in good condition. Enclosed you will find 30¢ in stamps and if this does not cover cost let me know, and oblige.

Very truly yours,
(Signed) JOHN D. VARN.

P. S. Have used pen in school three years in writing and mathematics and it is still first-class.

5212 Letterhead.

Jamestown, Ohio, Aug. 29th, 1910.

A. A. Waterman & Co.,
New York City.

Gentlemen:

Under separate cover I am sending you one of your fountain pens that has been in use the past six years just as it is, and has not caused me one bit of expense or any trouble. I wish to have a new No. 3 point (medium) exchanged for the old pen point and the feed fixed so it will flow a little more freely. Please send me the amount of the bill and I will forward same at once, as
5213 I am in a great hurry for the pen.

Yours very truly,
DR. F. J. FIFIELD.

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Letterhead.

Birmingham, Ala., Sept. 6th, 1910.

The Modern Pen Company,
New York City.

Gentlemen:

5214 I am sending you in today's registered mail, one fountain pen of your make, which I have used satisfactorily for, I think, three years. It is now in such shape however, that it will not refill, and needs a new rubber tube inside. The pen has given good service, and I should like to have it repaired as early as possible and returned to me by registered mail, for which I enclose herewith the necessary postage. At your convenience, advise me as to the charge for repairing it, obliging,

Yours truly,
(Signed) J. W. McQUEEN.

North Fork, Va., Sept. 9th, 1910. 5215

Modern Pen Company,
New York, N. Y.

Gentlemen:

I am enclosing you in a separate package my fountain pen, which I wish you to repair for me.

The trouble seems to be in the point, the cap came off in my pocket one day and in some way the pen point was slightly damaged, and has not given me real good satisfaction since. It is really the very best pen I ever used in my life, and it is almost new, as I had it exchanged with you on May 25th, of this year, as you will see by the enclosed invoice.

It is only a slight matter, but I prefer to have it write a 5216
little easier and I wish you to repair the point for me, or put in a new one if necessary, exactly like the one now in the pen, as it suits my hand exactly.

Send the bill to me, and I will remit at once.

Thanking you in advance, I am,

Very truly,

(Signed) T. W. CARTER.

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Letterhead.

Rochester, N. Y., Sept. 15th, 1910.

Modern Pen Co.,
New York, N. Y. 5217

Gentlemen:

I beg to acknowledge receipt of my two pens which have just arrived. I have filled them both and have given them a trial. I am very much pleased with them and you may rest assured that whenever the opportunity affords, I am very strong on the boost for the A. A. Waterman & Co.'s pen, and their treatment to customers. I have been the means of several sales here already. Pardon this kind of stuff but I cannot say enough for your pen when I get started, as I am a very enthusiastic user.

Thanking you very kindly for favors shown me, I remain,

Yours very truly,

(Signed) CHAS. H. McCONNELL.

5218 Hamilton, Mo., Oct. 28th, 1910.

A. A. Waterman & Co.,
New York.

Gentlemen:

Please send me a catalogue of your fountain pens both "Automatic self-filling Modern" and plain, also state whether or not you can repair a self-filling Modern patented 12/12 1899 made by your Company and oblige,

Yours respectfully,
(Signed) GUY A. DAVIS,
217 N. Main St.

5219 P. S. Have used one of your pens for five years with great satisfaction.

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Letterhead.

Louisville, Ky. Oct. 31st, 1910.

A. A. Waterman & Co.

Dear Sirs:

5220 Owing to a mistake in the initials, I sent my fountain pen to be repaired to the L. E. Waterman Co. when it should have come to your firm. I have written to ask them to turn it over to you as it takes so long to make the trip back and forth to Kentucky, and I need it very much. It has always been highly satisfactory; the point is exactly what I want. I sent a dollar with the pen as it needs a new barrel or cylinder (it was crushed). They will probably send it and also the money left after the postage they use; please look after it and if there is not enough of change left, I will gladly send the rest, as I am a teacher and my pen is in constant use—have used it for three or four years with most perfect satisfaction. Perhaps on receiving this you will ring them up and say that you have heard from me. I would so much appreciate it.

They were very kind, answering promptly, but were unfortunately the wrong firm. Let me hear from my pen as soon as possible—and if any extra charges, I will gladly remit. 5221

Sincerely,

(Signed) MISS ANNA GRUNDER,
1236 Cherokee Road.

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811 Washington Ave.
Madison, S. D. Nov. 4th, 1910.

A. A. Waterman Fountain Pen Co.,
113 Broadway, N. Y. City.

Gentlemen: 5222

I bought an automatic self-filling fountain pen from Anderson's Drug Store here three years ago. It was warranted for five years, but it has burst at the end where you turn it to fill the pen. I left it in a safe place but the ink must have dried up and shrunk the inside, for when I tried to open the end to fill it, it would not turn around either way. It is a fine pen, and I have always enjoyed using it and singing its praise to the users of another make.

I wish to know what you will do about my broken pen, as Mr. Anderson has sold out his business here and the new firm will not have anything to do with my fountain pen.

Hoping a favorable reply from you soon. 5223

Very truly yours,
(MISS) JESSIE A. BEARDSLEY.

5224 Letterhead.

Des Moines, Iowa, Dec. 2nd, 1910.

A. A. Waterman,
New York.

Dear Sir:

I send you by today's mail a self-filling fountain pen for repairs; my bull dog chewed it up; this pen has become a habit with me, could not get along without it; want same pen No. 4, please send statement for remittance and oblige by promptly returning it, so that it is perfect all over before returning and oblige,

Yours very truly,

5225 (Signed) J. C. FORD,
408 Locust St.

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Letterhead.

Detroit, Mich. December 5th, 1910.

A. A. Waterman & Co.,
New York, N. Y.

Gentlemen:

I have used one of your large sized self-filling Modern fountain pens since early in January, 1902, practically nine (9)
5226 years. This is one of your pens which has the rubber tube cemented to the end of the pen for filling. This pen has been used constantly during this period and has never required any attention, until now. The rubber tube has a very small split in it on the end, making it inconvenient for filling, although it does not put the pen out of use.

Kindly forward me one of these tubes and I shall gladly remit to you the cost of same.

For your information, this tube is about 1/4" outside diameter by 3-1/4" long.

Yours very truly,
(Signed) C. R. LOOS,
Purch. Agt.

Academy and Industrial School. 5227

Delorme, W. Va., Dec. 6th, 1910.

A. A. Waterman & Co.,
New York City.

Dear Sirs:

Please send me by mail one fountain pen: Automatic Self-filling Modern, Modern Pen Co., Sales Agts. Pat. Dec. 12th, 1899, Nov. 17th, '09.

Enclosed please find check of party desiring it. We presume pen costs $2.50. Balance to collect check and postage. Please advise if any more is due and will remit.

Yours,
(Signed) ALFRED ERICKSON, 5228
Prest.

P. S. We have found above pen splendid, and we think can't be beat.

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White Salmon, Wash. Dec. 7th, 1910.

A. A. Waterman & Co.,
New York City.

Gentlemen:

Six years ago this Christmas while living in North Dakota, I had one of your self-filling pens, retailing at $2.50 given me. That pen has been in constant use, and has never failed me; I wrote this letter with it. 5229

I would like to get a pen exactly like mine for my wife this year. The last patent mark on my pen is Nov. 17th, 1903, and the point is No. 2. Inclosed find money order for $2.50 for the pen, and oblige,

Yours respectfully,
(Signed) HERBERT B. CLARK.

5230 Howard College.

Birmingham, Ala., Dec. 23rd, 1910.

A. A. Waterman & Co.,
New York City.

Gentlemen:

I am sending you in today's mail my fountain pen, which is broken, and you will greatly oblige me by repairing the same. It is an "A1" and I don't want to try for a new one to take its place. Send me the bill and I will remit promptly.

Yours truly,
(Signed) W. A. BERRY.

5231 ———

Lapeer, Mich., Dec. 27th, 1910.

The Modern Pen Co.,
22 Thames St., N. Y. City.

Dear Sirs:

By this mail, I am sending my fountain pen, which is in need of repair. I would like the point straightened and any other repairs necessary to put it in good shape. Please advise me as to the charges so that I may remit at once and receive my pen as soon as possible.

5232 This is the fourth pen I have bought from you, and they have all given the users good satisfaction.

Yours very truly,
(Signed) C. BERENICE SMITH,
R. F. D. No. 8.

Letterhead. 5233

Brockton, Mass. 1-11-'11.

Modern Pen Co.,
22 Thames St., N. Y. City.

Gentlemen:

I herey acknowledge the receipt of my pen today, and I think you have placed it in the condition I desired, and for which I am very grateful.

I am very much pleased with your pens, and have recommended them to a large number of persons.

Yours very truly,
(Signed) E. R. MAHAN. 5234

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Letterhead.

San Luis, Col., Jan. 13th, 1911.

A. A. Waterman & Co.,
22 Thames St., N. Y.

Gentlemen:

I am sending you under separate cover one of your automatic self-filling pens which I wish you to look over carefully, and make any repairs necessary. Also adjust or renew the pen as this gold pen is slightly stiff. This pen has had five years usage in Panama and did good service. 5235

Please send bill as soon as the amount is ascertained and I will remit.

Yours very truly,
(Signed) W. D. WALTMAN.

5236 Indianapolis, Ind., Jan. 14th, 1911.

A. A. Waterman & Co.,
New York City.

Gentlemen:

I am sending you my pen under separate cover to have the sack or inside part replaced. I have tried many pens, but this is the "best ever."

I enclose 25¢ in stamps. Please return it soon, as I shall be lost without it.

Yours truly,
(Signed) H. S. CUNNINGHAM,
c/o Linden Hotel.

5237

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Letterhead.

Birmingham, Ala., Jan. 17th, 1911.

A. A. Waterman & Co.,
New York, N. Y.

Gentlemen:

Please notice we have sent you for repair seven pens by registered mail. One of these was our individual pen, the best pen we ever used, marked "Joe M. Webb." If you can make it as
5238 before, we shall be satisfied. It slipped out of our hand, and just a few inches, the point striking the show case; do not think you will find it seriously injured. Repair and return at your earliest convenience.

Respectfully,
WEBB BOOK CO.,
2010 Second Ave.

Letterhead.

5239

Honolulu, Jan. 19th, 1911.

Modern Pen Company,
New York City.

Gentlemen:

You will receive under separate cover a Waterman pen which is in need of repair. I herewith enclose my check for $5.00 to cover cost of repairs on same, and also, for two No. 30 Modern self-filling pens, plain barrel with stub point.

I have used an A. A. Waterman self-filling pen for eight years almost constantly. Without it I should be as helpless as if I had lost my right hand. I believe it to be by far the best fountain pen on the market. I want an extra one on hand in case of accident to the one I have. 5240

Yours truly,
(Signed) WADE WARREN THAYER.

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Letterhead.

Wilkinson, Ind., Jan. 19th, 1911.

Modern Pen Co.,
New York City.

Gentlemen:

Pursuant to advice in your letter of the 5th of May, 1910, I am returning to you 1 A. A. Waterman & Co. fountain pen, No. 6 point. As I wrote you before, this pen is very satisfactory, and I have used it for several years, but now I desire it for ledger use and the pen is too coarse. 5241

I prefer a fine point, large size pen; you will understand what I need for bookkeeper's use. This point has just the exact flexibility I like, so if you can grind it down and make it all right, do so, but if it will in any way injure point, I would prefer to have you put a new point in this barrel and accept old point in exchange at whatever it is worth. Send me bill for charges and I will remit at once.

Yours truly,
(Signed) J. L. JUSTICE.

P. S. Cap is bursted, kindly fit with new cap like old one.

Pottsville, Pa., Jan. 20th, 1911.

5242

Modern Pen Co.,
22 Thames St., N. Y.

Dear Sirs:

Under separate cover I send you my Modern No. 2 self-filling pen for repairs. Kindly inform me what the charges will be, and I shall forward the price. This I have to say, I have used this pen for four years and find it the best pen I ever used, having used no less than a half dozen of other makes before this one.

Kindly oblige,
FRANK E. MONTAG,
1406 W. Norwegian St.

5243

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Letterhead.

Paulding, Ohio, Jan. 23rd, 1911.

A. A. Waterman & Co.,
New York, N. Y.

Gentlemen:

I am returning you one of your fountain pens which I would like to have you either put in a new pen or fix the point and
5244 also furnish me a new cap, as I lost the other one.

I have had this pen for about ten or eleven years, and it is one of the best I have had. Send me the amount for the above repairs and parts, and I will remit by return mail. I do not like the point too sharp.

Yours truly,
(Signed) EWD BUCK.

Postal 5245

St. John, N. D., Jan. 25, 1911.

A. A. Waterman & Co.

Gentlemen:

Please send me your catalogue or price list of fountain pens. I want to purchase a self-filling fountain pen of your make. The last fountain pen owned by me was a self-filling (A. A.) Waterman, and after four years of constant use, was as good as new until stepped upon and broken.

Yours truly,
(Signed) C. M. STARKS.

5246

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216 E. 4th St.,
Duluth, Minn., Jan. 27, 1911.

Modern Pen Co.,
New York City.

Gentlemen:

What is your price on a self-filling fountain pen—medium, for lady uses, with one gold band.

I owned one that gave perfect satisfaction, did not drop the ink, as many of the fountain pens do. I sent it to be repaired once to you, it did good service afterward, but my misfortune 5247
was losing it in a street car. It gave such good service I feel I have lost a steady, reliable friend out of my life.

I wish to find one as good, so write direct to you. Please quote me the style and prices (postpaid).

Yours respectfully,
(Signed) MRS. MARY J. KRIEDLER.

5248 Letterhead.

Chattanooga, Tenn., Feb. 6th, 1911.

Modern Pen Co.,
New York, N. Y.

Gentlemen:

I am sending you my pen under separate cover, to have you put the point in good order. I struck it against something a few days ago, and since then it seems to scratch and spread, not letting the ink flow as freely as it should.

I have been using that same pen continually for nearly five years and have not had a thing wrong with it nor have I had
5249 any new rubber container for the ink put in, but for fear it may need one soon, you will please put one in while you have it.

I recommend the self-filled above all.

Yours,

L. J. PETTUS.

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Insurance Company of North America.

Pilot Point, Texas, 2/7/1911.

A. A. Waterman & Co.,
New York.

5250 Dear Sir:

I am sending you by registered mail one automatic self-filling fountain pen; please repair and return as soon as possible.

I have used this pen for five years without any repairs to date. I remain,

Very truly yours,
(Signed) J. EARL SELZ.

Letterhead.

5251

San Antonio, Texas 2/7/'11.

A. A. Waterman & Co.,
22 Thames St., City.

Gentlemen:

Please quote me price on your Modern Automatic self-filling fountain pen. The particular kind that I want to get is the style sent out by the DeLaval Separator Co., and has Modern No. 5 on the point. They sent me one of these pens and I found it the most satisfactory and, in fact the only fountain pen that I could ever write with, but, unfortunately, it has been lost and I am very anxious to procure another.

5252

Trusting to hear from you by return mail, I am,

Very truly yours,
(Signed) WM. HALLORAN,
Box 560.

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Carmen, Okla., Feb. 11th, 1911.

Wm. Frazier & Co.,

Dear Sirs:

Enclosed find $1.00 please send me the best Lincoln fountain pen that you can send me for the money. I have used the Lincoln fountain pen for several years and I find them the best pens I can get regardless of the price. I am using one now that cost twice as much as the Lincoln that is not worth half as much. I am using it because I lost mine.

5253

Yours,
(Signed) M. C. LAKEY.

5254 Letterhead.

Birmingham, Ala., Feb. 15th, 1911.

Messrs. A. A. Waterman & Co.,
New York, N. Y.

Dear Sirs:

I have used many fountain pens but none that gave me the satisfaction that the one I have requested my Druggist, Dr. Bushfiel to return to you for repairs. My little boys got a hold of it, and afterward it got a fall that finished it. I will appreciate it if you will send it back as good as it was before.

Very truly yours,
(Signed) C. C. JONES, M. D.

5255

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Letterhead.

Riverside, Cal. Feb. 27th, 1911.

The Modern Pen Company,
22 Thames St., New York.

Gents:

Please ship me as follows:

5256 1 Automatic A. A. Waterman pen No. 6 mottled, with No. 4 or 5 pen; No. 4 preferred, very fine point for wife, she being a fine penman, but of course, not so fine that it would not be durable (medium soft). Will enclose you a pen she has used, about the right thing. I have to take the description from my own old No. 5 which you shipped me Nov. 9th, 1908, and no better pen was ever put on the market. $10.00 would not tempt me to sell it. This is my fifth order.

Now as to price. As I don't know just what you will select $2.00 or $3.00 ship at once, I will remit as I did before.

Yours,
(Signed) M. T. CUNNIFF.

P. S. The most Modern, send me catalogue for different styles.

Willits, Cal. Mar. 4th, 1911. 5257

A. A. Waterman & Co.,
New York, N. Y.

Gentlemen:

I am sending you today by registered mail one fountain pen. Please put in new gold pen point, and notify me as to what the charges will be, and I will remit at once.

Please return the pen as soon as possible for I have to use a steel pen in the meantime, and it is hard for me to write with anything but an A. A. Waterman fountain pen.

Yours truly,
(Signed) MRS. F. H. WHITNEY.

5258

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F. H. Thomas Company.

691 Boylston St., Boston, Mass., Mar. 6th, '11.

Gentlemen:

We are sending you today, 6 pens for repairs and banding. One of the No. 70 pens, the one which has a clip on the cap, is my personal pen, which I have used for seven or eight years, and which has been entirely satisfactory up to a few days ago, when it suddenly began to drop ink. I am sure you can make this right, and return with the other pens when ready.

Very truly yours, 5259
F. H. THOMAS CO.
(Signed) H. L. Crowley,

5260 Letterhead.

Pittsburg, Pa., Mar. 7th, 1911.

A. A. Waterman & Co.,
New York, N. Y.

Gentlemen:

Five years ago last Christmas my wife gave me the pen with which I am writing this letter. The pen has been used every day on all kinds of paper and filled with all kinds of ink, from indellible to "protective" ink, and the point and filling device are as perfect today as when I first received it, and in fact, I believe better, because it has had so much more experience.

5261 It has not been my practice to write letters of this kind, but, as I am so well pleased with the performance of your product, I feel that it is your due.

The pen is one of your self-filling "Modern."

Yours very truly,
(Signed) P. S. EGGERS.

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Letterhead.

Sunnyside, Charlottetown, P. E. I.,
Mar. 17th, 1911.

The Modern Pen Co.,
New York, N. Y.

5262 Dear Sirs:

We will soon be sending you an order for some more of your self-filling Modern Fountain Pens. The L. E. Waterman Co. have been hot on our trail to sell their goods, but we are still staying by your self-filler as it gives a good return and also gives our customers the utmost satisfaction.

We are sending you by mail today our "personal pen" please change the nibs or gold point to one as near the enclosed sample as possible, as the writer finds the present point too coarse. Kindly return same when fixed to us by mail with invoice for amount in exchange of pens, and oblige.

Yours sincerely,
HASZARD & MOORE.

Letterhead.

5263

Henderson, Ky., Mar. 20th, 1911.

Gentlemen:

I am sending under separate cover my fountain pens for repairs, also 25¢ to cover cost of same; if not sufficient amount let me know and I will send same to you. I have used the pen for so long and find it so satisfactory that I am simply lost without it. I think it quite the best pen I have ever used.

Please repair same and return as soon as convenient and oblige.

Yours truly,
(Signed) DR. H. C. BOAZ.

5264

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Letterhead.

Greenville, S. C., Mar. 27th, 1911.

The A. A. Waterman Co.,
New York City.

Gentlemen:

Under separate cover and by registered mail, I am returning to you one of your self-filling pens with which I have met with a slight accident as you will note. I have used the pen for several years and has given very good satisfaction, and would like to have the same old pen put back in good condition if possible. 5265

Kindly let me know what the cost of the repairs will be and an allowance will be sent immediately to cover same.

Trusting that you will give this matter your immediate attention, I remain,

Yours very truly,
(Signed) L. M. BANNON.

5266 **Defendant's Exhibit A-61. Nineteen Letters of Denunciation of Plaintiff's Pens.**

W. P. White.

Volga City, Iowa, Mar. 25th, 1911.

Modern Pen Co.,
New York, N. Y.

Gentlemen:

I return to you a Waterman that never gave satisfaction.

Yours truly,
(Signed) W. P. WHITE.

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5267

Letterhead.

St. Paul, Minn. Mar. 29th, 1910.

A. A. Waterman,
New York.

Gentlemen:

Kindly repair the enclosed fountain pen which you will find leaks; return at your earliest convenience, and oblige.

Yours truly,
E. A. BROWN CO.

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5268

B. & R. R. CO.

Office of Stationer.

Baltimore, June 13th, 1910.

Modern Pen Co.,
22 Thames St., N. Y.

Gentlemen:

Will send you by registered mail my fountain pen, which is in bad shape. It leaks considerably and the metal on the pen has slipped up to the end so far that the cap cannot be reversed.

If this pen can be remedied, would thank you to do so in addition to which, would be pleased to have you repair the point, as it writes too coarsely. In returning, send to address given below with bill. 5269

Yours very truly,
(Signed) E. E. HEROLD.

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Letterhead.

Norfolk, Va., June 16th, 1910.

The Modern Pen Co.,
New York. 5270

Gentlemen:

Enclose find pen which does not carry ink. Will please have same fixed and oblige.

Yours truly,
J. B. BENNETT CO.

---

Letterhead.

Hartford City, Ind., Aug 23rd, 1910.

Modern Ideal Pen Co. 5271

Sirs:

Enclosed you will find one of your pens which feeds too freely. Please repair and return to us as soon as possible, and oblige.

Yours,
WEHRLY BORS.

5272 Letterhead.

Anderson, Ind., Aug. 27th, 1910.

A. A. Waterman & Co.,
New York.

Dear Sir:

We are sending by mail one (1) fountain pen which has never been satisfactory. Please put same in good order and return at once. Thanking you we remain,

Yours truly,
(Singed) D. & J. ROSENBAUM.

---

5273 E. C. Gow, M. D.

Schulyerville, N. Y., Sept. 5th, 1910.

A. A. Waterman & Co.,
22 Thames St., N. Y. City.

Sirs:

Will you suggest a remedy for an Ideal Pen that leaks when carried upright. If this defect can be repaired only at the factory, let me hear from you.

Yours truly,
(Signed) E. L. GOW.

---

5274 Letterhead.

Providence, R. I., Sept. 26th, 1910.

Messrs. A. A. Waterman & Co.,
New York.

Gentlemen:

Please repair pens which we send by mail. New pen in the one which is broken, and the other one does not feed well.

Yours truly,
W. J. BRAITSCH & CO.

Letterhead. 5275

408 Odd Fellows Temple, Phila., Pa.
Oct. 5th, 1910.

A. A. Waterman & Co.,
New York, N. Y.

Gentlemen:

I am mailing you my fountain pen today which has always leaked at the joint, also will ask you to lessen the flow.

If any charges, kindly advise me how much before touching the pen, I remain,

Yours truly,
(Signed) N. E. KARPER. 5276

---

Crescent Jewelry Company,

S. Friedlander.

Memphis, Tenn., Oct. 17th, 1910.

A. A. Waterman & Co.,
New York, N. Y.

Gentlemen:

We are sending you by today's registered mail one fountain pen. Kindly increase flow on same and return to us as soon as possible and oblige. 5277

Yours truly,
S. FRIEDLANDER.

5278 Letterhead.

Sheboygan, Wis., Nov. 15th, 1910.

A. A. Waterman & Co.,
New York.

Gentlemen:

Under separate cover, I am sending you one of your fountain pens; always leaks, which certainly makes it very disagreeable. Will you kindly fix same. The pen has not been in use more than a week.

Hoping you will give this prompt attention, beg to remain,

Yours truly,
BRUHN DRUG CO.

5279

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Letterhead.

Albany, Ga., Nov. 22nd, 1910.

A. A. Waterman,
22 Thames St.,
New York City.

Gentlemen:

Enclosed herewith beg to hand you $1.00 and one of your
5280 Ideal pens. Please have new pen put in and reclean. For some reason there is a constant little leak at the valve, no matter how tight you screw it in. Please see if you can adjust this trouble. Return as early as possible and oblige.

Yours very truly,
K. M. DICKSON,
c/o Herald Pub. Co.,
Albany, Ga.

Letterhead.

5281

Centerville, Ala., Dec. 7th, 1910.

Gentlemen:

My customer claims that this pen leaks, so he can't use it. Please repair and return.

Yours,

(Signed) S. C. MEIGS.

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Letterhead.

Pensacola, Fla., Dec. 10th, 1910.

Modern Pen Co.,
New York, N. Y.

5282

Gentlemen:

We are sending by today's mail one L. E. W. pen for general repairs, same also flows too freely.

Kindly let us have the pen as early as possible and oblige.

Yours very truly,
BALL BOOK & NOVELTY CO.

---

Letterhead.

Louisville, Ky., Dec. 17th, 1910.

A. Waterman & Co.,
New York, N. Y.

5283

Gentlemen:

We are sending under separate cover one of your fountain pens which our customer complains of having a great deal of trouble with. Since we have had such perfect satisfaction with several of these pens, we feel sure that you would wish us to return this one to you. Kindly put in good order and return to us at your earliest convenience.

Yours respectfully,
SOUTHERN OPTICAL CO.

5284 Letterhead.

Newark, Ohio, Jan. 12th, 1911.

Waterman Pen Co.

Gentlemen:

The enclosed pen leaks and does not write satisfactory. Please repair at once and return.

Yours etc.,
H. C. BOSTWICK & CO.

---

5285 Letterhead.

Pensacola, Fla., Feb. 11th, 1911.

Modern Pen Co.,
New York, N. Y.

Gentlemen:

We are sending by today's mail, one pen "Adama"; kindly lessen flow of same.

This pen leaks quite a good deal, and may require other repairs. Return pen as quickly as possible and oblige.

Yours very truly,
BALL BOOK AND NOVELTY CO.

5286

Letterhead. 5287

Tullahoma, Tenn., Feb. 23rd, 1911.

Messrs. A. A. Waterman Co.,
New York, N. Y.

Gentlemen:

Please let me know what makes my pen leak ink as it does at the point end?

I am mailing same to you under separate cover this evening. I should like to have it corrected and returned promptly, though do not like to put much money into it.

Thanking you for kind attention, I await your early reply.

Respectfully,
(Signed) J. L. DANN, 5288
P. O. Box 254.

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330 Central Ave.,
Rochester, N. Y., Mar. 16th, 1911.

A. A. Waterman & Co.

Am sending you my pen which I purchased at McCurdy, Norwell & Co., Rochester, N. Y.

I have the fourth pen, each one a little more expensive. This one I paid four dollars for. When writing the pen often skips and goes into the paper. It also leaks dreadfully unless it is 5289
filled to the very top.

As McCurdy & Norwell had but this one at four dollars at the time and said they would not have more until Easter or June, I concluded to write and ask you to replace this pen with one that will not leak or scratch the way this one has a tendency to do on left-hand strokes.

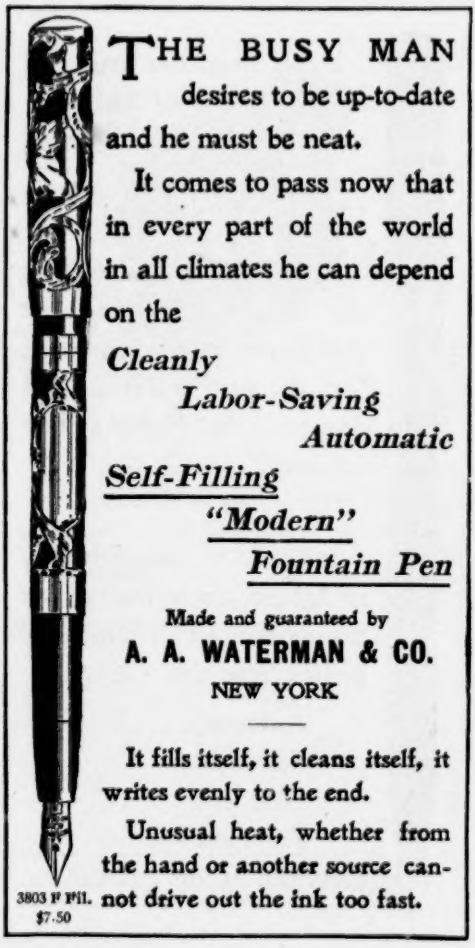
Thanking you for the trouble I am putting you to, I remain,

Truly yours,
(Signed) MISS A. BACHMANN.

P. S. Do not have the pen any finer than this one.

5290 **Defendant's Exhibit A-63.**

Two placards will be exhibited to the Court, in connection with the circular.

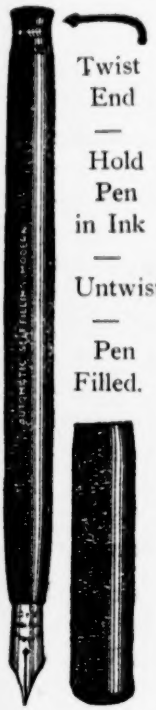

THE BUSY MAN
desires to be up-to-date and he must be neat.
It comes to pass now that in every part of the world in all climates he can depend on the
Cleanly
Labor-Saving
Automatic
Self-Filling
"Modern"
Fountain Pen
Made and guaranteed by
A. A. WATERMAN & CO.
NEW YORK
It fills itself, it cleans itself, it writes evenly to the end.
Unusual heat, whether from the hand or another source cannot drive out the ink too fast.
3803 F Fil.
$7.50

5291

5292

## Defendant's Exhibit A-64.

Advertisement in a Magazine called the "Widow," published in Syracuse, N. Y.



Twist End

—

Hold Pen in Ink

—

Untwist

—

Pen Filled.

Automatic Self-filling

MODERN FOUNTAIN PEN

Here is the part that makes it the simplest and most practical of all self-filling pens.

As Easy as Winding Your Watch

**Construction simple.**
**Nothing to take apart to fill the fountain.**
**No joints to leak.**
**Cleans itself in filling.**

**Every pen guaranteed.**
**It is an economical busy man's pen.**

**From $2.00 to $6.00.**
**All Styles of holders and points.**

Modern Pen Company
Sole Selling Agent for
A. A. Waterman & Co.

126 Greenwich Street New York 22 Thames Street

*"If it isn't an 'A. A.' it isn't a MODERN."*

For Sale at the "Co-op."

5296 **Defendant's Exhibit A-65.**

Special meeting of the Frazer & Geyer Co. held at the offices of the Merritt & Chapman Derrick & Wrecking Co., 17 Battery Place, City of New York, at 4 P. M. on the 19th day of April, 1905, pursuant to the following notice which was sent to all the stockholders:

"April 15, 1905.

"The financial condition of this Company is such at the present time that it is deemed necessary by the Directors to have a discussion of matters relating thereto at a meeting of the stockholders. For that purpose, and to consider the question of contributing therefor by the stockholders by way of an assessment
5297 or subscription, I hereby call a meeting of the stockholders, to be held at 17 Battery Place, Room 1914-1922 on Wednesday, the 19th of April, 1905, at four o'clock in the afternoon. There will be considered at this meeting the question of the advisability of an assessment or subscription by the stockholders of substantially fifteen per cent of the amount of stock held by them.

Yours &c.,
(Signed) ISAAC E. CHAPMAN,
President."

| Present | Com. | 1st Pre. | 2nd Pre. |
|---|---|---|---|
| J. E. Chapman, representing in person | 109 | 128 | 36 |
| W. L. Chapman " | 13 | 21 | 15 |
| 5298 H. W. Harris " | | | 2 |
| G. W. Kerst, " | 2 | 11 | 8 |
| C. F. Woodward (representing H. Nutty) | 1 | 3 | 1 |
| W. G. Frazer, representing in person, | 60 | 5 | 17 |
| A. Edwards, " | 1 | 2 | 2 |
| A. A. Waterman, " | 14 | 15 | 17 |
| H. W. Geyer, " | 53 | | 3 |
| A. K. Alexander, representing Miss B. Alexander | | | 80 |
| C. P. Carrington, representing in person, | | 2 | 5 |
| G. T. Hay, " | | 12 | 3 |

| | | | | |
|---|---|---|---|---|
| J. W. Foster, also representing J. C. Foster, and Fannie Foster | 1 | 9 | 5 | 5299 |
| C. E. Alexander, representing in person, | | 20 | 5 | |
| B. F. Jayne, " | 2 | 5 | 3 | |
| also representing Martha C. Jayne | | 4 | 6 | |
| F. A. Wilson, representing in person | 2 | 6 | 2 | |
| A. Williams, representing W. Williams | 1 | 3 | 1 | |
| I. E. Chapman, represented Mrs. E. H. Benedict | | 8 | | |
| F. A. Dayton, representing in person | | | 10 | |
| A. N. Chapman, " | 5 | 10 | 10 | |
| L. F. Chapman, " | 5 | 15 | | |
| Est. Wm. E. Chapman, Inc. " | 5 | 20 | 10 | |
| C. E. Dingee (represented) | | | 10 | |
| C. M. Davidson (represented) | 1 | 2 | 2 | 5300 |
| L. S. Davis (represented by Capt. B. F. Jayne) | 2 | 5 | 3 | |
| Ida A. Dingee (represented) | | 20 | 20 | |
| A. C. Van Valer, representing in person | | | 5 | |
| T. S. Snyder, " | 2 | 8 | | |
| E. Geyer (represented) | | | 2 | |
| J. S. F. McLeod, representing in person | 1 | 3 | 1 | |
| P. G. Ridgeway (represented by B. F. Jayne) | | 4 | 1 | |
| A. W. Smith (represented by I. E. Chapman) | | | 10 | |
| also Clara A. Smith, | 5 | 5 | 5 | |
| I. K. Schmidt (represented by I. E. Chapman, through J. C. Seager) | 3 | 6 | 6 | |
| E. W. Wood represented by I. E. C.) | 1 | 1 | 1 | |
| J. C. Forsyth, representing in person | 1 | 9 | | |
| | — | — | — | 5301 |
| | 290 | 362 | 307 | |

(After the no. of shares represented had been counted, it was announced that about three-quarters of the stock was represented.)

Col. A. S. Bacon, as attorney, addressed the stockholders in reference to the present condition of the Company and said in part as follows:

"The Chapmans, representing themselves and the Chapman Estate have loaned about $30,000 and do not feel like lending any more money to the Company under the present condition of

5302 affairs. Both they and Mr. Frazer and Mr. Geyer have desired to call the stockholders together to see if you had any proposition to make to tide over the present emergency. The Company must have cash. There have been several propositions suggested, none of which seems to be satisfactory. It has been thought that a voluntary assessment of about $15.00 per share would place the Company beyond ordinary necessities: it would not remove certain matters of management which have not been wholly satisfactory, but that can be passed for the present. This meeting is called a special meeting of the stockholders, yet, it is an irregular one. We can do little more than advise. Stockholders, I take it, have no powers in a corporation except to elect Directors and consent to mortgage, &c. But you gentlemen are deeply interested in this corporation. I think, perhaps, this is all I
5303 ought to say in the present circumstances, and leave it to the gentlemen present to discuss, freely and frankly among themselves. The past is behind us. It is of no use to make explanations only; the future must be met. The Messrs. Chapman have been in the habit of advancing a good deal of money to protect their own interests which are very large, I think perhaps their family own a majority of it. In doing that they have helped you. They do not feel that under present circumstances they should advance further cash. As business men you would not do it with like security. I have advised them that their security is very far from satisfactory. There must be something done to meet the emergency. The intrinsic value of the enterprise is not doubted; the pens, the patents and the business are all of value, and there
5304 is no reason why the Company should not be a success if properly managed in all its departments."

This is entirely informal, gentlemen, and it is highly important that every man should free his mind.

Mr. Frazer then stated that his legal representative was unable to be present on account of illness.

Mr. I. E. Chapman then spoke about the losses of the Company during the past two or three years, its present poor condition, the differences existing between himself and Mr. Frazer, and explained why the business needed more cash.

Mr. Dayton. "What has the loss been up to date, and what has been the cause of this loss?" 5305

Mr. W. L. Chapman. "The loss has been caused because they sold a dollar's worth of goods for 75 cents."

Mr. I. E. Chapman then stated that endeavoring to carry on a larger business without sufficient capital and employing inexperienced salesmen had been among the things which caused the loss, and suggested that the Company be reorganized, and that an assignment be made by getting three-quarters of the stock to consent to it, and that the new company buy out the old company, and that a sort of syndicate be formed for those who could not pay their assessment, which syndicate would pay it for them in return for a part of their holdings, say one-half, which of course would be a personal matter between the parties 5306 interested, and further stated that he thought that in that way most of the assessment would be paid and the Company thus realize from fifteen to eighteen thousand dollars which would be fully sufficient to carry on the business and to prove that the business can be carried on and made to earn dividends.

Mr. Frazer suggested that a sufficient amount of stock be turned in to cover the amount needed by the assessment. This was objected to, however, because (1) it would not raise the money needed, and (2) there would be two methods of stock redemption, which was not feasible.

Mr. Snyder stated that a decided change in the management was necessary; that, even if the assessment were paid, they would be confronted with the same condition a year hence, un- 5307 less there was some change made in the management.

Mr. F. A. Wilson then offered the following:

RESOLVED, that we try and find out how many are willing to put up $15 a share on their holdings, or those that they represent, with the understanding that the management be satisfactory to the stockholder."

Mr. W. L. Chapman seconded the motion which was CARRIED.

The following then said that they were in favor of the provisions of the above motion:

I. E. Chapman,
W. L. Chapman,
H. W. Harris,
G. W. Kerst,
C. F. Woodward,
W. G. Frazer, (conditionally &c)
A. Edwards,
J. C. Forsyth,
A. A. Waterman,
D. C. Van Valer,
H. W. Geyer,
A. K. Alexander,
C. P. Carrington,
F. A. Dayton,
C. E. Alexander,
B. F. Jayne,
F. A. Wilson,
T. S. Snyder.

Mr. F. A. Wilson then offered the following:

RESOLVED, That the Chair appoint a Committee to decide upon the management, which will later report to the stockholders, and that the same Committee also submit a plan of reorganization to the stockholders.

Mr. Snyder seconded the motion, which was CARRIED.

In accordance with the above motion the Chair thereupon appointed the following to act on the Committee named:

Messrs. B. F. Jayne,
Geo. T. Hay,
Wm. G. Frazer,
A. Williams,
I. E. Chapman,
H. W. Geyer,
A. W. Smith,
F. A. Wilson,
A. K. Alexander,
W. L. Chapman,
J. W. Foster.

Mr. F. A. Wilson then offered the following: 5311

RESOLVED, That the report of the Committee be presented in writing, a copy being sent to each stockholder prior to a meeting of the stockholders which will be regularly called to discuss the matters.

Mr. W. L. Chapman seconded the motion which was *carried*.

It was then regularly moved and seconded that the meeting adjourn. Time 5:50 P. M.

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April 26th, 1905.

A meeting of the Reorganization Committee of the Frazer & Geyer Co., appointed at the meeting of the stockholders on April 19th, 1905, was held this day at 4:10 P. M. at No. 17 Battery Place, New York City. All members of the Committee except Mr. Geo. T. Hay were present. 5312

Mr. I. E. Chapman was elected Chairman of the Committee, and Mr. W. D. Williams, Secretary.

The Secretary read the draft report of the Committee.

Mr. F. A. Wilson then read a letter from Mr. T. S. Snyder outlining a plan of reorganization.

Mr. A. A. Waterman was unanimously elected a member of the Committee, and Mr. Straley, Mr. Frazer's attorney, then addressed the mtg.

Mr. F. A. Wilson then offered the following:

RESOLVED, That the reorganization be made without bonds. 5313
This motion was seconded by Mr. W. D. Williams, and CARRIED.

The meeting then discussed the draft report which had been submitted, and suggested that the following changes in the report, together with others, be made:

(1) That in order to give confidence to the stockholders something be inserted in the report to show that during the last few months the Company has been holding its own, and that radical economical changes have been made during this time.

5314 (2) That the name of the new Company be left to the Board of Directors.

(3) That the annual meeting be held late in January or early in February.

(4) Mr. W. L. Chapman then offered the following:

RESOLVED, That the number of Directors of the new Company be nine. This was seconded by Mr. A. W. Smith and CARRIED.

Mr. Straley then suggested that the clause in reference to assessment be changed in part as follows: "$18,500 or such other sum as the Committee on Reorganization may fix."

Mr. A. W. Smith then offered the following:

5315 RESOLVED, That Col. Alex. S. Bacon be retained as counsel, to be employed in the reorganization of the Company.

This motion was seconded by Mr. F. A. Wilson and CARRIED.

Mr. F. A. Wilson then offered the following:

RESOLVED, That the Directors of the new Company appoint an Executive Committee which shall have the business of the Company directly in charge, and to whom the Manager, who shall be Mr. I. E. Chapman, shall report at least monthly.

This was seconded by Mr. A. W. Smith and CARRIED.

The meeting then adjourned *sine die*.

5316

**Defendant's Exhibit A-62.** 5317

WILLIAM E. WEAVER,
Attorney and Counselor,
13-21 Park Row,
New York.

Room 2138, Park Row Bldg.
Telephone, 6614 Cortlandt.

May 10th, 1905.

Col. A. S. Bacon,
37 Liberty Street, City.

Dear Sir:

5318

Since talking with you over the 'phone this morning, I have met Mr. Waterman, and we have carefully gone over the situation in the complicated affairs of Frazer & Geyer Company, and A. A. Waterman & Co. I am compelled to conclude, after careful consideration, that affairs have reached a position which it is desirable, not to say necessary, that the affairs of the corporation should be handled under judicial control, in the best interest of all concerned. Mr. Waterman himself, as you are no doubt aware, is one of the largest stockholders in the corporation, his holdings being exceeded only by four or five others. I have also some interests as a stockholder, and I certainly do not propose to put anything more in the business.

I enclose you draft of a circular letter which I should like to mail to stockholders this evening. I wish you would examine it, and see if the Chapmans will not join with me in it, or at least co-operate along this line. I think it affords a more satisfactory solution, than to prolong the agony with a new concern. Kindly let me hear from you before 4 this afternoon. 5319

Yours very truly,

W. E. WEAVER.

5320 WILLIAM E. WEAVER,
Attorney and Counselor,
13-21 Park Row,
New York.

Room 2138, Park Row Bldg.
Telephone, 6614 Cortlandt.

May 10th, 1905.

To the Stockholders
of Frazer & Geyer Co.:

Dear Sirs:

I am a stockholder of common and preferred stock in the above corporation, and as such I am in receipt of a so-called "Report
5321 of Committee on Reorganization," which bears date April 26th ult., but was mailed May 6th and received by me May 7th. This "Report" makes the startling announcement that the corporation has liabilities, including its capital stock, of over $170,000.00, and to meet its liabilities has assets of only $114,134.10, excluding "good will," which is given no value, and probably has little or none. Its assets include over $60,000.00 "Accounts Receivable," the actual value of which depends of course upon the solvency of its creditors, and in any event will be subject to some depreciation; and items of nearly $20,000.00 for "Patents" and "Royalty," the actual value of which must be more or less speculative. It is probably a conservative estimate to place the actual assets at not over $100,000.

5322 What does this mean ? That in a little over three years time, the Company has lost over $70,000.00 of its capital stock of about $126,000.00 Upon such a record, it was entirely unnecessary for the Committee to tell us "that the management has not been efficient." The figures speak for themselves.

What are you and I now asked to do? Our stock is non-assessable. We cannot be compelled to "throw good money after bad." We are therefore asked to do so voluntarily, to make a gift to the Company of $15.00 in cash for each and every share of our holdings of stock. If it took only about three years to lose over $70,000.00 in this business, how long will it take to use up a paltry $18,000,—assuming that every stockholder was foolish enough to contribute $15.00 per share?

I ask every stockholder to do as I have done,—to pause and consider carefully the proposition which the Committee places before him, before putting any more of his good money into the business. 5323

I am somewhat familiar with the business of Frazer & Geyer Company. Over 80% of all their business is derived from one single order, placed with them by A. A. Waterman & Co., under a contract by which on certain conditions A. A. Waterman & Co. gave Frazer & Geyer Co. an exclusive order for A. A. Waterman & Co.'s pens; this order or contract is by its terms not assignable, and expressly provides that "in case they (Frazer & Geyer Company) cannot furnish goods, the party of the second part (A. A. Waterman & Co.) may procure them elsewhere."

Now, with the proposed dissolution of Frazer & Geyer Co., and the organization of a new corporation (whose stock we are asked to take in lieu of our present stock), the new corporation may at the outset lose over 80% of the present business; for the new concern has no assurance that it will receive orders from A. A. Waterman & Co. The new corporation must start business with an assured annual volume of business of less than $25,000.00,—upon a proposed investment of $114,000, and with a capitalization of over $125,000. What possible or reasonable chance is there for stockholders to receive dividends even upon the fresh cash which it is proposed to put in, to say nothing of their former investment? And by what magic is the loss of $70,000 in the last three years to be converted into dividend paying profits? 5324

I submit that sound business judgment dictates that we should make the best of an inexcusably bad situation, not by putting more money in, but by saving what is still left of the wreck. If the Committee's figures are reliable, there should be assets for stockholders of $70,000,—or approximately 50¢ on the dollar of their stock. 5325

In my opinion, the only safe thing to do is to petition for the appointment of a receiver. The Court will then appoint a proper and competent person, who will at once take in hand the management of the business, will conduct in such manner as best to conserve the interests of all, creditors and stockholders and dissolve the corporation, under the direction and sanction of the

5326 Court, and with regard to the interests of ALL CONCERNED, and not for the benefit of any particular individuals. The interests of stockholders will not, as intimated in the Committee's circular, be "sacrificed." The Court will not permit the sacrifice of their interests by foreclosure of mortgages or otherwise. Certainly their interests cannot be worse "sacrificed" than they have been during the last three years.

I therefore request you to refrain from signing the proposed "Consent to Sale of the Assets" which the Committee have sent to stockholders; and ask you, instead, to sign and return to me at once the enclosed, directing the directors of the Company to present a petition to the Supreme Court, praying for a final order dissolving the corporation, as prescribed by law. The di-
5327 rectors must present such a petition to the Court, whenever directed to do so by a majority of the stockholders in interest of the stockholders.

Kindly sign the enclosed, and return the same to me at once. If you have already signed the Committee's "consent" to the sale of assets, please so inform me, and I will advise you in the premises. I am acting in this matter as a stockholder, not as an attorney; and stockholders will not incur any financial obligation to me whatever by reason of my connection with the matter.

Very truly yours,

W. E. WEAVER.

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5328 **Defendant's Exhibit A-66.**

22 Thames Street, New York City,
June 14, 1905.

Oriental Bank,
184 Broadway,
New York City.

Gentlemen:

I am informed by your cashier that a check for $250 is at your Bank for payment today, signed by A. A. Waterman & Co.

in the handwriting of William G. Frazer, payable to the order of Straley & Hasbrouck. 5329

You are hereby notified and forbidden to pay this check, on the ground that Mr. Frazer is not now, and has not been since June 8, 1905, a member of the firm of A. A. Waterman & Co., or authorized to sign the name of the firm.

On June 8, 1905, an order was duly entered in the office of the Clerk of the County of New York appointing Gratz Nathan, Esq., receiver of the property of Mr. Frazer, including his interest in the firm of A. A. Waterman & Co. The fact of Mr. Frazer's insolvency immediately dissolved the firm of A. A. Waterman & Co., and it is now in liquidation, and no person has any right to sign the firm name except Hobart W. Geyer and Arthur A. Waterman.

If you pay this check, we will hold you to strict legal accountability. 5330

We find that one check is missing from the A. A. Waterman & Co. check book. It bears the same number as that now presented to you for payment. This check was taken with the knowledge, consent and connivance of Mr. Frazer and Mr. Geyer, without filling in the stub or leaving any record on the books. Straley & Hasbrouck are not now and never have been the attorneys for the firm of A. A. Waterman & Co., nor are they now or ever have been its creditors. This check is a fraud on its face. Straley & Hasbrouck are the personal attorneys of Mr. Frazer and they have no claim whatever on A. A. Waterman & Co.

Yours truly, 5331

A. A. WATERMAN,

for A. A. Waterman & Co. in liquidation.

P. S. If you wish a bond of indemnity we will give it with pleasure.

5332

## Defendant's Exhibit A-67.

Card showing different processes through which the pen is put in its manufacture. Will be exhibited to court.

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## Defendant's Exhibit A-68.

Six cards showing methods of manufacture. Will be exhibited to court.

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5333

## Defendant's Exhibit A-69.

Two of plaintiff's pen points; soft iridium. Will be exhibited to court.

5334

## Remainder of Saadi Correspondence.

5335

JOHN SAADI, Prop.

SAADI,

Maker of

EGYPTIAN DIAMOND JEWELRY,

and The Royal Ideal Pen,
602 Ninth Street N. W.
Washington, D. C.

308 Hicks Street,
Brooklyn, N. Y.

817 E. Broad Street
Richmond, Va.

Please address reply to

5336

Nov. 20th, 1909.
602 9th St. N. W.
Washington, D. C.

The Modern Pen Co.,
New York City.

Gentlemen:

I am making a new electro of a new design and as I expect to be in New York the 26th or 27th Inst. I will bring it along. Also I will give you the note as requested by you.

Yours Respectfully,

JOHN SAADI.

5337

H. W. G.
W. M. M.
N. H.
E. A. P.
A. M. H.
Order
Credit
Repair
Exchange
Cash
B'keeper

Modern Pen Co., Received Nov. 22, 1909 A. M. P. M. 7, 8, 8, 10, 11, 12, 1, 2, 3, 4, 5, 6.

Mar. 1st, 1910.

5338

Mr. J. Saadi,
Washington, D. C.

Dear Sir:

We have not as yet been favored with your note to cover your past due account.

Kindly give this matter your attention, as we are very anxious to have same adjusted.

Hoping to hear from you favorably, we remain,

Yours truly,
THE MODERN PEN COMPANY,
By A. H. Hoffman, Jr.

5339

———

Mar. 22nd, 1910.

Mr. John Saadi,
Washington, D. C.

Dear Sir:

Enclosed we hand you statement of your account, and we request that you send us a short time note for this.

We have brought suit against the L. E. Waterman Co. to restrain them from suing our customers, but it will probably be some months before the case is finally settled. If you have any of our goods which you cannot use we will be pleased to

5340 give you credit for them, or exchange them for you, whichever you prefer.

We have heard nothing from your attorneys, so do not know whether they are doing anything further in the matter of your suit or not.

Yours truly,
THE MODERN PEN COMPANY,
Hobart W. Geyer,
Ass't. Treasurer.

May 31st, 1910. 5341

Mr. John Saadi,
Washington, D. C.

Dear Sir:

Will you kindly advise us when we may expect check in settlement of the balance due us amounting to $235.15.

This amount is considerably past due.

Yours truly,
THE MODERN PEN COMPANY,
By A. H. Hoffman, Jr.

---

5342

(Cut)

22 Thames Street—125 Greenwich Street

$258.95/100 May 12, 1910.

At three days sight pay to the order of National City Bank Two Hundred Fifty-eight and 95/100 Dollars.

Value received and charge the same to account of
MODERN PEN CO.,
Sole Selling Agents for A. A. Waterman & Co.,
H. W. Geyer.

To Mr. John Saadi,
No. 602 9th St. N. W., 5343
Washington, D. C.

(Endorsed): National City Bank May 14 1910 Prior endorsements guaranteed, Washington, D. C.

UNITED STATES CIRCUIT COURT. 5347

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Complainant,

vs.

MODERN PEN COMPANY,
Defendant.

In Equity.

5348

New York, November 17, 1911.

Further proofs on behalf of the complainant taken before William H. K. Davey, Deputy Clerk, pursuant to permission granted by the order of the Honorable Alfred C. Coxe, dated November 16th, 1911.

APPEARANCES:

SAMUEL S. WATSON, Attorney for the Complainant.
ALEXANDER S. BACON, Attorney for the Defendant.
MORTON STEIN, of Counsel.

5349

Mr. Watson: The complainant offers in evidence a certified and exemplified copy of the judgment entered in the Royal Civil and Penal Tribunal of Milan, Italy, Part I, on July 1st, 1911, wherein L. E. Waterman Co., the plaintiff herein, is the complainant, and Guido Cabrini is the defendant, and the firm of A. A. Waterman & Co., composed of Messrs. Isaac E. Chapman and William L. Chapman, are interveners.

Mr. Stein: I object to the characteriza-

5350 tion by Mr. Watson of the paper he now offers in evidence. My objection is based on the ground that the paper, if admissible in evidence, must of itself speak for itself, and that it is improper for Mr. Watson to describe it as a certified or exemplified copy of a judgment, and improper in all other ways to further describe it in the manner in which he did; that I particularly object to Mr. Watson's statement that in the action purporting to be described in said paper, the firm of A. A. Waterman & Co., is an intervening party; that such statement as
5351 to the fact is without any foundation in the proofs in this action.

Mr. Watson: (Continuing) The document now offered in evidence marked Exhibit "A" by Judge Coxe at the time of the hearing on motion to reopen the proofs in this action, the complainant asks that the same be received in evidence and marked Complainant's Exhibit 143.

Mr. Stein: Do I correctly understand, Mr. Watson, that you merely offer in evidence a paper purporting to be a copy of a
5352 judgment in the action described by you?

I object to the admission of the paper referred to by Mr. Watson, which was marked Exhibit "A" by Judge Coxe, and which Mr. Watson asks to be marked Plaintiff's Exhibit 143, upon the ground that it is incompetent, irrelevant and immaterial; that it does not and cannot in any way bind the defendant; that it is not proof; that no proper foundation has been laid therefor; that it is neither certified nor exemplified in the manner required of foreign decrees,

judgments, or determinations of foreign courts, so as to make the same admissible in this action. 5353

As to that part thereof which Mr. Watson has described as the opinion, the objection is made on all the grounds heretofore named, and on the further ground that an opinion of the Court is not the subject of proof in this matter; that it is no part of the record, and can have no determinative effect against any party or person, and especially a person not a party to that proceeding.

The objection is made to the whole paper and as to each and every part thereof, and the objections as to those based on general irrelevancy, immateriality and incompetency are not to be deemed objections in limitation of the general objection. 5354

Mr. Watson: The complainant offers the paper marked Plaintiff's Exhibit 143 in evidence as a bar and estoppel of the defendant's claims to the right to use the names "Waterman," "Waterman's," "A. A. Waterman & Co.," "Waterman Modern," "Waterman Modern Fountain Pen."

Also as an adjudication between the plaintiff herein and the concern A. A. Waterman & Co., through which the defendant claims the right to use the names "Waterman" and "A. A. Waterman & Co.," that the agreement of June 12, 1905, between Arthur A. Waterman, Isaac E. Chapman and William L. Chapman, is a fraudulent agreement. 5355

Also an adjudication between the plaintiff and said A. A. Waterman & Co., that the said agreement of June 12th, 1905, was merely an agreement for the sale of a name without any accompanying business.

5356 Also as a bar and estoppel against the defendant of its claims that the said agreement of June 12th, 1905, was an agreement in connection with the reorganization of an already existing business.

Also as a bar and estoppel of the defendant's claims as against this plaintiff to use the names "Waterman," "Waterman's," or "A. A. Waterman & Co." in the fountain pen business, or in connection with the manufacture and sale of fountain pens under said agreement of June 12th, 1905, between Arthur A. Waterman and Isaac E. Chapman and William L. Chapman.

5357

The above are set out in reply to the defendant's objections.

Mr. Stein: The defendant renewing its objections, to the admission of the aforesaid paper heretofore marked Exhibit "A" by Judge Coxe, renews each objection heretofore made by it on the ground that the said paper is inadmissible as against it for the reasons then stated.

The defendant respectfully insists that the statements just made by counsel are statements of the issues or some of them, in this action to be determined upon the trial, and this defendant inter alia respectfully submits that those issues are to be determined as between these American citizens doing business in the United States by this court, and not by any court of any foreign jurisdiction, whether it be that of Italy, China, or any other jurisdiction.

5358

Mr. Watson: I offer in evidence a paper which purports to be a fair translation of said judgment, Complainant's Exhibit No.

143, and ask that the same be marked Complainant's Exhibit 144. 5359

Counsel states that at the next session he will call persons versed in the Italian and English languages to prove that the paper submitted and marked Complainant's Exhibit 144, is a fair translation of the paper marked Complainant's Exhibit 143.

Mr. Stein: I object to the admission of the paper in evidence on the ground that it is incompetent, irrelevant and immaterial as to this defendant, and as to any of the issues raised in this action, that it is hearsay at best; that it is not proof; that no proper foundation has been laid therefor, and that no witness has been called to prove that the paper is a translation, fair translation, or unfair translation; and that at the present time it can in no way have any binding effect against this defendant. 5360

Mr. Watson: In view of defendant's counsel's statement on the record, the Court's attention is called to the unnecessary padding of the record, and in this connection the Court's attention is also called to the long objection previously put on the record regarding the paper marked Plaintiff's Exhibit 143, and respectfully submits that the record on its face shows unnecessary padding; and the plaintiff gives notice that he will move the Court to tax the costs of taking this deposition against the defendant at the final hearing. 5361

Mr. Stein: Defendant's counsel in answer to the last statement refers the Trial Justice to this record itself as to whether there has been any unnecessary padding, and, if so, who has been guilty of said act, particularly

5362

referring as to this session to the unnecessary statement of counsel as to the purpose for which he has offered Complainant's Exhibit 143.

The defendant submits that this record will speak for itself in this and all other connections.

Mr. Watson: The plaintiff renews his objection and gives further notice of his motion.

5363 Adjourned to Saturday, November 18th, 1911, at 11 o'clock A. M.

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New York, November 18, 1911. 2 P. M.

Met pursuant to adjournment.

Appearances as before.

Mr. Stein. The defendant objects further to the paper (the Italian decree marked Exhibit "A" by Judge Coxe, and Plaintiff's Exhibit 143), on the ground that the same has not been pleaded and that res adjudicata has not been pleaded.

5364 The defendant objects to the admission of the paper marked Complainants' Exhibit 144, upon all the grounds heretofore enumerated; and upon the further ground that res adjudicata has not been pleaded.

EDGAR R. ACCETTA, a witness called on behalf of the complainant, being duly sworn, deposes as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, age, residence and occupation?

5365

A. Edgar R. Accetta, 198 Grand Street.

Q2. New York City?

A. New York City, Borough of Manhattan.

Q3. What is your business?

A. Well, I am a lawyer, attorney at law.

Q4. Are you familiar with the Italian language and the English language?

A. I am.

Q5. Are you able to fairly translate from the Italian language into the English language?

A. Yes, sir.

5366

Q6. Have you ever acted as official interpreter for any courts in this State or District?

A. I did.

Q7. What courts?

A. United States District Court.

Q8. In New York?

A. For the Southern District of New York.

Q9. Have you compared the translation, Plaintiff's Exhibit No. 144, with the Italian copy of Plaintiff's Exhibit 143, to determine whether or not Exhibit 144 is a fair translation of Exhibit 143?

A. Yes, sir.

5367

Q10. Will you please state whether or not the Exhibit 144 is or is not a fair translation of Plaintiff's Exhibit 143?

A. Yes, sir, it is a fair translation thereof.

Mr. Watson: The paper marked Exhibit 144 is offered in evidence and the examiner is asked to mark it Complainants' Exhibit No. 144.

Mr. Stein: The defendant objects to the admission of the paper asked to be marked Plaintiff's Exhibit No. 144 on the ground that it is incompetent, irrelevant and im-

material as to this defendant, no proper foundation has been laid therefor, that neither it nor the paper of which it purports to be a translation has been pleaded; that res adjudicata has not been pleaded.

Cross-examination by Mr. Stein:

XQ1. Are you admitted to practice in the courts of New York?

A. Not in the courts of New York, sir.

5369 XQ2. In what courts?

A. Courts of Indiana.

XQ3. How long were you the official interpreter of the United States District Court of the Southern District of New York?

A. For the last couple of years, I think.

XQ4. You are now acting as interpreter there?

A. Yes, sir.

XQ5. And have you your office in the court house?

A. No, I have not.

XQ6. You are simply called in to interpret in cases?

A. Yes, sir.

5370 XQ7. And you are familiar, I presume, with certain Italian dialects?

A. I am.

XQ8. And it is as to those dialects that you interpret?

A. Not only as to dialects, but as to the language.

XQ9. As to the language generally?

A. Yes, sir.

XQ10. When did you first see the paper marked Complainant's Exhibit No. 143?

A. 143,—do you mean this here judgment?

XQ11. Yes?

5371

A. Well, it is about three weeks ago, I think.

XQ12. When did you first see the paper marked Exhibit No. 144?

A. The same time.

Mr. Watson: After this one, after this one. This one was later (indicating).

The Witness: Oh, this is later. I saw the translation, I saw a translation of that paper which I corrected according to my best judgment.

5372

XQ13. Which you personally corrected?

A. I did.

XQ14. And who made that translation which you then saw and is in evidence?

A. Who made that translation then?

XQ15. Yes.

A. I don't know.

XQ16. When did you first see the translation marked Exhibit 144?

A. I saw it last week, I think.

XQ17. What day?

A. Well, if I said last week, it is about a week ago.

373

XQ18. Did you personally make the translation that is found in Exhibit 144?

A. Not this here translation; I corrected the first translation, and I suppose this has been written and I compared the both of them, the original and the translation, and I found it to be correct.

XQ19. Are you sure the paper now marked Exhibit 144 is the translation that you saw?

A. Yes, sir; I had it with me for the last three days, I think.

XQ20. All the time?

A. Yes, sir.

XQ21. Now, did it leave your possession at any time during those three days?

A. Yes, it did once.

XQ22. When?

A. Two days ago.

XQ23. When did you get it back?

A. Same day.

XQ24. And that was Thursday?

A. Yes, sir.

XQ25. And since Thursday it has not been out
5375 of your possession, is that correct?

A. Yes, sir.

XQ26. I now call your attention to the fact that that paper was marked in evidence yesterday, Friday, at a hearing here at which you were not present, and ask you how you reconcile that fact with your testimony?

A. Well, if I had not this one with me I had a copy thereof.

XQ27. Where is that copy?

A. In the printer's.

XQ28. Well what is the best of your recollection
5376 as to what that copy contained that you testify complainant's Exhibit 144 is a fair translation of Complainant's Exhibit 143?

A. Well, I had this all day with me to-day, you see.

XQ29. Yes?

A. And I compared it word for word and I am ready to testify now that this is the proper, just and fair translation of the original.

XQ30. Yes. Now if you were making a new translation would you change any word or any phrase or any sentence from the position or condition in which it now appears in Exhibit 144?

5377

A. No, sir.

XQ31. So that you would agree word for word with everything, word for word, as far as those two exhibits are concerned with the man that translated it; is that correct?

A. I think so.

XQ32. Who did translate this?

A. I don't know.

XQ33. And you would not suggest one change?

A. I did suggest changes, and the changes were made.

XQ34. On the original?

5378

A. Certainly.

XQ35. And who made that original translation?

A. I really don't know, sir.

XQ36. To whom did you make the suggestions?

A. To myself.

XQ37. And to whom did you communicate them?

A. To Mr. Watson.

XQ38. And with whom did Mr. Watson then communicate, if you know?

A. I don't know, sir.

XQ39. What is that paper, Exhibit 143?

5379

A. It is a judgment.

XQ40. Anything else?

A. It is simply a judgment.

XQ41. Is it anything else but a judgment?

A. It is what you call a decree or judgment.

XQ42. Yes, does it contain anything other than what we in the United States Circuit Court for the Southern District of New York, know as a decree or judgment?

A. Why, it contains what we in the Italian law call a decree or judgment.

XQ43. Will you kindly answer my question, Mr. Accetta?

A. Well, I cannot answer your question, really, because this is a different procedure.

XQ44. In other words the Italian procedure is entirely different from the procedure followed in the United States Circuit Court?

A. Well, I suppose it is.

XQ45. Well, do you know?

A. I think I do, yes.

XQ46. Well, what is the difference?

5381 A. Well, you don't want me to start from the beginning of the law and compare—

XQ47. I am asking is it different?

Mr. Watson: Counsel for the complainant has listened here with a good deal of patience to repeated questions of the defendant's attorney which have been fully and frankly and freely answered, and submits to the Court that the witness has fully and freely and frankly answered the questions and that the question now asked is entirely—in the first place has been fully answered,—and in the next place is entirely improper in form.

5382

XQ48. Is it different?

A. Is it different what?

XQ49. (XQ48 read.)

A. Well, if you want to know all that this judgment contains, I can be able to tell you.

XQ50. Well, that is what I am asking. What does it contain besides a judgment?

A. Contains the opinion of the Court, of course, and the statement of facts and then the judgment.

XQ51. Statement of facts, as narrated by the Court?

A. Yes, sir.

XQ52. And its opinion?

A. Yes, sir.

XQ53 Go ahead?

A. Well, it first contains all the facts as the Court in its opinion found.

XQ54. States, rather?

A. Yes, sir, states as to facts found after the presentation of the case, and then contains the points of the law and then it concludes, giving 5384
the opinion and the judgment.

XQ55. Do you find anything in there which shows that the Court determined the facts and the law on anything except what we know as affidavits and the argument of counsel?

A. Yes, sir, the judgment is based upon those affidavits and the argument of counsel.

XQ56. And do you find anything in there that indicates that the Court heard witnesses under oath who were subject to cross-examination?

A. Do you mean to say about the witnesses which were heard in America?

XQ57. I didn't hear what you said? What was 5385
the answer?

A. Which do you refer to?

XQ58. I mean to find out just what my questions call for.

A. All right.

XQ59. (XQ56 read to witness).

A. No, sir.

XQ60. Are you connected with the Polyglot Company in any way?

A. I am not.

Mr. Stein: That is all.

Re-direct Examination by Mr. Watson:

RDQ1. The paper, Complainant's Exhibit 143, is that the usual form of a judgment in the Italian courts?

A. Yes, sir.

Mr. Stein: One moment. I object to the question and move to strike out the answer on the ground that no proper foundation has been laid.

5387

RDQ2. Are you familiar with the practice in the Italian courts?

Mr. Stein: I object to the question on the ground that no proper foundation has been laid and that the question is leading and calls for the conclusion that the court in this action is called upon to determine.

A. I am.

RDQ3. What experience, if any, have you had, or what knowledge have you, of Italian law and

5388 practice?

A. I have been admitted in the lower courts of Italy.

RDQ4. Did you practice law in those courts in Italy?

A. I did.

RDQ5. For how long?

A. For a year or so.

RDQ6. Were you regularly admitted to practice in the courts of Italy?

A. I stated in the lower courts, yes, sir.

RDQ7. Is the paper, Complainant's Exhibit 143.

5389

the usual form of a judgment rendered by the Civil and Penal Court or Tribunal at Milan, Italy?

Mr. Stein: Objected to on the ground that no proper foundation has been laid, and as to the competency of the witness not being established.

A. Yes, sir.

RDQ8. Have you had any experience or knowledge of judgments of the Civil and Penal Court or any courts of Italy? 5390

A. Yes, sir.

RDQ9. Is the paper, Complainant's Exhibit 143, the usual form in which judgments and decrees of the Italian Courts are rendered?

Mr. Stein: Objected to on the ground that no proper foundation for the question is laid, and the competency of the witness to answer not being established.

RDQ10. Now, you may answer.

A. Yes, sir.

RDQ11. What knowledge or exprience have you had with judgments and decrees, proceedings and procedure of the Italian Courts? 5391

Mr. Stein: Objected to unless the question is limited to the particular Italian Court out of which Exhibit 143 purports to issue.

A. Why, the Code, the procedure, etc. are all the same for all the courts. We have one Code only by which we abide.

RDQ12. Does that apply to all the courts of Italy?

A. We have a criminal and civil code, and a code of commerce.

RDQ13. Are you familiar with those Codes?

A. I am.

RDQ14. Do you know whether the judgments and decrees of the courts in Italy are all of the same general form?

A. They are.

RDQ15. Is the paper, Complainant's Exhibit 143, in the form with which you are familiar?

A. Yes, sir.

5393 RDQ16. And is that paper, Complainant's Exhibit 143, the usual form of judgment and decree of the Italian courts with which you are familiar?

Mr. Stein: Objected to upon the same grounds.

A. Yes, sir.

RDQ17. You had this paper, Complainant's Exhibit 144, given to you last night by myself?

A. Yes, sir.

RDQ18. For several days prior thereto you had the identical sworn copy of the same translation in your hands, had you not?

5394 A. Yes, sir.

RDQ19. And that is the one which you referred to when you said you had this paper in your hands for a week?

A. Yes, sir; and as a matter of fact I don't know which was which, I looked them over and they both are the same.

RDQ20. One was a carbon copy of the other?

A. Yes, sir.

RDQ21. And both contain affidavits as appears on the last page identical in form as that last page of Complainant's Exhibit 144?

A. Yes, sir.

RDQ22. Did you since I gave you this paper last evening, Complainant's Exhibit 144, compare this paper with the original Complainant's Exhibit 143?

A. I did.

RDQ23. Did you find Complainant's Exhibit 144 was a fair and correct translation of Complainant's Exhibit 143?

A. Yes, sir.

Mr. Watson: That is all. 5396

Re-cross Examination by Mr. Stein:

RCQ1. Do I understand you to say that all decrees issuing out of Italian Courts are the same?

A. That is what I said, yes.

RCQ2. And that would apply to the petty criminal courts corresponding to our Magitsrate's Court and your court of highest jurisdiction?

A. Yes, sir.

RCQ3. So that the mandates of your highest appellate court would correspond in form with the orders, directions and mandates of your lower 5397 courts?

A. As far as I said, that is a statement of fact, according to the facts stated to the Court and its opinion, and then the point of law, and then the conclusion of the Court and the judgment.

RCQ4. And that would apply—

A. To each and every sentence—to each and every decree and judgment which the courts give.

RCQ5. And that would apply, do I understand, to the case of a man arrested for being drunk, and being sentenced to one day in prison?

A. Exactly the same. We have no Magistrate's court there.

RCQ6. Have you been admitted to practice in the Royal Civil and Penal Court of Milan?

A. No, sir.

RCQ7. That is not one of the courts, the lower courts, to which you were admitted to practice, is that correct?

A. No, sir.

RCQ8. Now, in Italy, when an action is finally brought on for hearing, witnesses are examined,
5399 are they not; and testimony taken, and the witnesses cross-examined by opposing counsel?

A. That depends upon the judgment or decree of the court.

RCQ9. Now, before judgment or decree of the court is entered is it not customary to examine witnesses and have them cross-examined?

A. As I said—

RCQ10. And to take their testimony?

A. That depends upon the judgment or decree of the court.

RCQ11. But the decree of the court is the last
5400 proceeding in the action, is it not?

A. Sir?

RCQ12. The judgment is the last thing done in an action?

A. Before the different stages of the procedure, yes.

RCQ13. Now, is it not customary and usual to examine witnesses in open court with the right to the opposing party to cross-examine?

A. In some of the cases, yes.

RCQ14. Well, does not that apply in commercial cases?

A. In some cases, it does.

5401

RCQ15. And when does it not?

A. When the court gives a judgment by which it disposes of the case without any demand of proof, without any demand of further proof.

RCQ16. For instance, like a judgment on the pleadings or where a cause of action is conceded?

A. Well, yes.

RCQ16. But where the facts are in dispute or certain are in dispute, is it not customary to have a jury to hear the oral testimony of the parties to the transaction, or witnesses to the transaction?

A. Not in civil actions, no.

5402

RCQ17. Not in civil actions.

A. No, sir. If you talk about a jury, yes.

RCQ18. Yes. Well what does the jury hear then in those particular cases?

A. We use the jury in Italy simply for criminal cases.

RCQ19. Well, now, in civil actions?

A. We believe in civil actions—

RCQ20. Where there is no jury?

A. Yes, sir.

RCQ21. Is it not customary for the judge to hear witnesses and to allow counsel to cross-examine?

5403

A. If a decree out of the court is such that further evidence is demanded, then the decree would be—

RCQ22. Demanded by whom?

A. By the judge.

RCQ23. So I understand from you that the law of Italy gives to a judge the absolute right of determining an action without hearing a single witness?

A. I don't say so.

RCQ24. Well, if a judge does not want to hear

witnesses can he determine the action without hearing them?

A. If the evidence as laid before them is such that he can give judgment, yes.

RCQ25. In what particular cases do you refer to that he can give judgment without hearing witnesses?

A. Whenever he decides that no further proof is necessary in the case.

RCQ26. Well, now, where there is a question of fact, and I presume you understand what I mean
5405 by a question of fact?

A. Certainly.

RCQ27. Can the court determine those issues without hearing witnesses?

A. That depends upon the evidence brought before the court.

RCQ28. Well, if there are no witnesses there cannot be evidence, can there?

A. Well, we have different kinds of evidence, have we not?

RCQ29. What is the procedure, as you know it, based on your one year of practice in the lower
5406 courts of Italy, and I refer now more particularly to the procedure of the Royal Civil and Penal Court of Milan?

A. The plaintiff serves a writ of summons and complaint to the defendant. The day is set for trial on the face of the summons. Both parties which are compelled to be assisted by counsel at the trial don't have to appear in person, but their lawyers appear before the court which is composed of three judges. One is the presiding judge, one is the assistant judge, and another is the relator. and they submit then what we call in Italy, what we call "Comparse Conclusivuali," which are

briefs and statements of fact. The papers are submitted to the court, and the court gives the paper to the judge relator in order that he may study the case and find findings. Then the papers are submitted to the judges who sit at what we call "Camera di Consiglio," or Chamber of Council. In the meanwhile, while the judge relator is studying the case, and before he brings the facts before the court, the attorneys on both sides submit what they call "Aggrinta alle comparse conclusionali"—for instance, amended briefs. The court may then desire to be enlightened more upon certain facts and it may be that the court will direct the attorneys on both sides to again file with the court additional briefs, and that is done until the court satisfies itself that all the facts are properly stated. 5407 5408

The court then, upon the relation made by the judge relator, and in the Chamber of Council, gives a judgment based upon the statements of fact submitted, and upon the opinion of the court, of course; in that judgment the court may decide finally; the court may order the plaintiff to prove his cause of action on grounds which the court states only, and the defendant then is allowed to show— 5409

RCQ30. In what way, by affidavits?

A. No, no.

RCQ31. By testimony?

A. By testimony, by testimony; is allowed to show by testimony his contentions.

We call the defendant's testimony "Ripruova." Then the judges,—Oh, pardon me. This here hearing of testimony is made before a judge appointed by the court to hear the testimony, which judge is a sort of referee, relates the facts to the judge relator who submits those facts to the court

5410 The court then may give its verdict upon the evidence submitted or may again demand some sort of explanations in the way of questions, which questions only, witnesses are allowed to answer; and then the court may give a judgment, but if the court finds that the preponderance of evidence is for either of the parties, the court then may order the party which enjoys the preponderance of evidence to be submitted to the final oath; the oath is given upon the statement of facts or questions submitted by the court only.

5411 It is understood that during the progress of the examination—

RCQ32. Pardon me. By oath what do you mean?

A. Pardon me. I will be through in a moment.

Counsel are present at the trial and the judge questions the witness, and counsel may ask the court to question the witness as to certain facts and the other counsel may oppose, and the court, of course rules, just as they do here in the courts of the United States where the common law prevails, the court may rule that the objection is sustained, etc.

5412 RCQ33. Is the right to cross-examine an absolute right or one subject to the discretion of the court in a case such as you have last instanced?

A. Well, in this case, you know, there is no proof by witnesses.

RCQ34. I am asking in the case that you have instanced?

A. Oh.

RCQ35. Is the right to cross-examine absolute or discretionary?

A. Why, they have a sort of—they have rules of evidence there—

5413

RCQ36. Oh, no. You know what I mean by cross-examination, do you not?

A. Of course.

RCQ37. Well, is the right to cross-examine?

A. Oh, yes,—there is,—

RCQ38. Absolute, is it absolute?

A. Certainly.

RCQ39. What did you mean by saying the court may hear under oath or the issue on oath?

A. To the party.

RCQ40. Yes?

A. Who enjoys the preponderance of evidence. 5414

RCQ41. Yes?

A. In his favor.

RCQ42. Yes?

A. Because the parties do not appear as witnesses there.

RCQ43. What do you mean by oath?

A. Why, the court may rule that the plaintiff in the action give the oath.

RCQ44. Take the oath?

A. Yes, take the oath—pardon me—to take the oath and to testify whether the allegations contained in the suit are true or not.

5415

RCQ45. I understand then that there is—that parties to the action are not ordinarily permitted to testify as witnesses?

A. No, sir, they are not.

RCQ46. No?

A. Entirely not.

RCQ47. What form of law prevails in Italy and governs in Italy?

A. The Roman law. Well, we have a lot of laws now. The law that we have now is code law.

RCQ48. Founded upon the old Roman law?

A. Old Roman law, the English law, the Napoleon law, and Church law, and so on.

RCQ49. And that is all worked into one code, is that it?

A. To one code, yes.

RCQ50. And each particular law applies to cover cases such as the one described in Complainant's Exhibit 143?

A. We have a code by itself.

RCQ51. A code commercial?

A. A commercial code, we call it.

5417 RCQ52. And that is based fundamentally on the Roman law, is it not?

A. Well, it is a code by itself and it is based upon Roman law, as well as any other law.

RCQ53. Yes, but fundamentally it is based on Roman law?

A. Yes, sir.

RCQ54. Now, is this paper that has been marked Exhibit 143 a final judgment? Has that conclusively determined all the rights of the parties, or may the courts still take further testimony before it finally determines the action?

5418 Mr. Watson: Counsel for the complainant objects to the testimony as not proper cross-examination, and as to inquiring into new matters not covered by the direct-examination that the defendant is bound by the answer and makes the witness his own.

Mr. Stein: Counsel for the defendant claims that the question is a proper one, and is proper cross-examination of this witness, as to his competency as an expert on Italian law.

The Witness: Shall I answer?

5419

RCQ55. Yes, answer.

A. This is a judgment for the plaintiff with the right to the plaintiff to prove the first two paragraphs of the allegations contained in its brief.

RCQ56. You mean what we know as the complaint?

A. It is not exactly what we know as the complaint, neither is it a brief, you see. The complaint and summons in itself is filed and it is served.

RCQ57. Yes.

A. And then comes this, what we call—

RCQ58. Do you refer by brief, by brief do you 4520
refer to the document that sets forth what the plaintiff claims to be his cause of action?

A. Why, no. The cause of action is stated in the allegations contained in the complaint.

RCQ59. Yes?

A. Now,—

RCQ60. Well, let us get away from that. I don't care enough about it. So under that paper marked Exhibit 143 I understand the plaintiff has now the right to prove—

A. Not only the right to prove the two allegations contained in the conclusion—well, I don't know how you want to call it—in the brief. 5421

RCQ61. Well, in the brief?

A. But he has the right to enforce by order of the Court the illegitimacy of the use made by Guido Cabrini in his own name and as the representative of Isaac and William Chapman of the names "Watermann," "Waterman's," "A. A. Waterman," "Waterman Modern," "Waterman's Modern Fountain Pen," for the introduction in Italy and for sale of the fountain pens, in Italy, of course, and for advertising purposes, and so on.

Because he says the use of the name is unlawful, etc.

RCQ62. Now, do I understand the case is not wholly closed now, but the right to make the proofs referred to is still in the plaintiff in that action?

A. Yes, sir.

RCQ63. Now, from such a judgment, there is the right of appeal, is there not?

A. Certainly.

RCQ64. I understand the case has been appealed. Has the appellate court the right to re-
5423 verse the lower court on the facts and on the law, or either on the facts or on the law?

A. Yes, sir.

RCQ65. And has the appellate court the further right to require the oral testimony of witnesses with the right of cross-examination?

A. If the Court finds—

RCQ66. Just answer the question: Has it the right?

A. You mean to hear additional evidence?

RCQ67. To hear additional evidence?

A. Yes, they have the right.

RCQ68. They have the right to reverse on the
5424 facts, have they not?

A. Certainly.

RCQ69. Also to reverse on the law?

A. Yes, sir.

RCQ70. It also has the right to send it back?

A. No, they don't send it back; they give their own decision.

RCQ71. And has it the right in making up its own decision, to send for further evidence or to require the taking of oral testimony?

A. Certainly.

RCQ72. Yes. Am I correct in understanding

that under the Italian Code the Italian Courts may try criminals who have fled the jurisdiction and who have never been arrested?

Mr. Watson: Objected to as immaterial.

A. Certainly.

Mr. Stein: That is all.

Further Re-direct Examination by Mr. Watson:

RDQ24. Referring to Complainant's Exhibit No. 143, the judgment of the Court is final as respects the agreement of December 12, 1905? 5425

A. Yes, certainly, that is final there.

RDQ25. No further evidence respecting the illegality or the legality of that agreement is required by the Court as shown by this judgment?

A. Yes, sir.

RDQ26. No further evidence is required?

A. No, sir. The only evidence that is required there is on certain points only.

RDQ27. Does the additional evidence required—

A. As I stated— 5427

RDQ28. Now, wait a minute, wait a minute. Does the evidence which the Court requires relate solely to the amount of the damages which the plaintiff has suffered?

A. Yes, sir.

RDQ29. And the additional proof required is only as to the amount of damage which the plaintiff has suffered?

A. That is all.

RDQ30. And the judgment in all other respects is final?

A. Is final, yes, sir.

RDQ31. Is the judgment of the Court as set out in the Complainant's Exhibit 143 final as far as this Court is concerned as to the illegality of the use by Cabrini and William Chapman and Isaac Chapman, finally decided and determined?

A. Yes, sir.

RDQ32. And what does the Court find regarding the use of the names "Watermann," "Waterman's," "A. A. Waterman's," "Waterman Modern," "Waterman's Modern Fountain Pen," by Cabrini, Isaac and William Chapman?

5429

Mr. Stein: Objected to on the ground that the judgment speaks for itself.

RDQ33. You may answer?

A. That it is illegitimate. Wait a minute. Don't you want the rest?

RDQ34. Yes.

A. Is illegitimate, is usurpation, of the firm rights, of the rights of the plaintiff, and is disloyal competition.

RDQ35. That is, that the use of those words constitutes unlawful competition?

A. Yes, sir, and it is ordered here—

5430

Mr. Stein: Now, one moment. I object to any further statement as not being an answer.

Mr. Watson: That is all.

Further Re-cross Examination by Mr. Stein:

RCQ73. The decree as far as it affects the validity of the agreement of June 12, 1905, is of course subject to reviewable action by the Appellate Court, is it not?

A. Of course.

RCQ74. And consequently it is not a final decree until finally,—until the matter be finally determined by the Appellate Court?

A. Well, I don't know the stage of the case at present, so that I can not tell you.

RCQ75. Well, if an appeal be pending from this decree Exhibit 143, that decree is not final until the matter is finally determined by the Appellate Court, is it?

A. We follow the same rules as the United States Courts here.

RCQ76. Where are the first two paragraphs of 5432
the brief that you refer to as to which the plaintiff can give further testimony?

A. I have got a brief here—

RCQ77. Point it out in the original decree; that is the paper (indicating)?

A. Yes, "a" and "b."

RCQ78. Well, where is "a" and "b?" Those are the two specific items, the first two paragraphs in the brief that you refer to, is that correct?

A. Yes, sir.

RCQ79. Let me see anything in this translation, Complainant's Exhibit 144, that says it refers only to damages and assessment of damages. I under- 5433
stand that the "a" and "b" you refer to starts with the last paragraph on page 3 of Complainant's Exhibit 144, and takes in through the paragraph marked "b" on page 4 of Exhibit 144?

A. Yes, sir.

RCQ80. Now, show me, in either of those two, where the only issue left open is as to computation of damages in favor of the plaintiff, and show me anything in either of those two paragraphs which you have marked out or referred to which relates to the assessment of damages?

5434

Mr. Watson: Counsel for the complainant submits that the question is most unfair and is a misconstruction of the witness's testimony, and submits to the Court that it is the evident intent of counsel to confuse the Court and the witness.

Mr. Stein: Counsel for the defendant states that this record will speak for itself and the good faith of counsel can be determined from the record by the Court.

The Witness: Shall I answer?

5435

(Question read.)

A. You must look to the full judgment in order to give a proper answer, because in the judgment it states that these two allegations are stated fully, the proof must be based upon the statement of fact alleged in paragraph "A," which speaks by itself, does it not?

RCQ81. Suppose you read it?

A. "A. That since the said Cabrini placed the pens of Messrs Isaac & William Chapman on the market under the name of 'Waterman' or 'Waterman Modern,' many buyers of these pens called and

5436 are still calling at the office of Mr. Carlo Drisaldi, general representative of the original 'Waterman's Fountain Pens' of the plaintiff company, and keeping same in stock, and protested that the pens which they bought in the belief that they were original 'Waterman' pens of the plaintiff company did either not work at all or they worked badly."

Then at the end of that, of the allegations, the plaintiff demands costs and damages.

RCQ82. Now, read "b?"

A. Which refers, of course, to allegation "A."

RCQ83. Yes?

A. Now, read "b?"

RCQ84. Where is it that the plaintiff demands costs and damages? Show us that in 144?

Mr. Watson: On page 5 of Exhibit 144.

RCQ85. And that reads that, that demand is in the following language: "Likewise with condemnation in the costs and with executory judgment."

(Not answered.)

RCQ86. Do you know where the brief of L. E. Waterman is?

5438

A. I read it, but I don't know where it is now.

RCQ87. Can you tell us offhand the first two paragraphs of that brief?

A. If I see the brief, yes.

RCQ88. Without seeing the brief?

A. No, sir.

RCQ89. Are you willing now, without seeing the brief, to state positively that the first two paragraphs of that brief relate to the assessment of damages in favor of L. E. Waterman Company and against Guido Cabrini and William and Isaac Chapman?

A. As far as I recall it.

5439

RCQ90. Will you state positively?

A. Not positively, no sir.

RCQ91. You will not?

A. No, sir.

RCQ92. So that you cannot now tell us positively what the first two paragraphs of that brief referred to?

A. Unless I see it.

RCQ93. Can you tell it to us now; answer yes or no?

A. No.

RCQ94. And you cannot tell us now as to the two questions left open by this paper or decree marked Complainant's Exhibit 143, is that correct?

A. Yes, sir.

RCQ95. Then was your testimony in answer to Mr. Watson that those two questions merely related to assessment of damages in favor of L. E. Waterman Company, erroneous?

A. No. It is not erroneous. You want each and every word of the allegations, and I am unable
5441 to tell you.

RCQ96. Do you know substantially what those allegations are right now?

A. Yes, substantially I do know; a demand for damages.

RCQ97. The first two allegations of the brief merely demand damages?

A. Not merely, demand among other things.

RCQ98. What other things?

A. That is what I say, I cannot refresh my recollection.

RCQ99. Was the damage question the important one as to each of these two paragraphs?

5442 A. It impressed me so, because I had the judgment before me and I could see what the judges had in mind.

RCQ100. But you cannot tell what other matters were embraced in these first two paragraphs?

A. Not exactly, no.

Mr. Stein I think that is all I want of this witness.

Further Re-direct Examination by Mr. Watson:

RDQ36. Are you able to state now, with your further examination of Complainant's Exhibit 143,

that this judgment is a final determination and to the force and effect of the agreement of June 12, 1905, mentioned in it?

A. Yes, I am.

RDQ37. What is the effect of the typewritten clause which is attached next to the last page of the Exhibit No. 143 which is in English?

Mr. Stein: I object to that as no part of the exhibit.

Mr. Watson: Oh, yes, it is part of the exhibit.

5444

Mr. Stein: It has not been proved. I object now further to the admission of the paper marked Complainant's Exhibit No. 143, upon the ground as shown by the statement of Mr. Watson, just made, that on page 20 thereof there is attached a typewritten paper in English which upon the face thereof is no part of the so-called Italian decree.

RDQ38. Will you answer the question?

A. Why, this is an execution of the judgment.

RDQ39. Is the paper or slip referred to a translation of what appears at the bottom of the last page, or on page 20 of Exhibit 143? 5445

A. Yes, sir—you mean down at the bottom here (indicating).

RDQ40. Yes?

A. Yes, sir.

RDQ41. Does the paragraph at the bottom of page 20 of Exhibit 143 make the judgment enforceable in Italy immediately?

A. Yes, sir.

Further Re-cross Examination by Mr. Stein:

RCQ101. That which you have just referred to at the bottom of page 20 is merely something printed on paper with a rubber stamp, is it not?

A. Yes, sir, and it is signed by the Court.

RCQ102. Which part is signed by the Court? Now, can you tell us what force and effect the Royal Civil and Penal Code of Milan gives to decrees and orders of the United States Circuit Court of the United States of America?

5447 A. Full force and effect.

RCQ103. In all matters and at all times?

A. Well, yes, sir, provided— Well, provided such decrees do not go against the commissioner—I don't know the words exactly in the code.

RCQ104. Well, give it to us in substance?

Mr. Watson: I object to the question as inquiring into new matter, and complainant's counsel gives notice that the defendant makes the witness his own, and therefore he is bound by his answers.

5448 A. Have you the Italian code of civil procedure here, Mr. Watson?

Mr. Watson: Yes, sir.

The Witness: Yes, that they have full force and effect.

Mr. Watson: Here it is.

The Witness: That is the one I want, Code of Civil Procedure. Yes, unless the judgment contains dispositions against the public order or against the public rights of the Kingdom.

5449

RCQ105. Do I then understand that the Italian Courts will give no force or effect or in anyway recognize any decree of the United States District Court or of the United States Circuit Court or the United States Supreme Court involving contracts, made in the United States, between corporations organized in the United States, or individuals, citizens and residents of the United States, if the law of Italy is opposed to the decisions thus rendered?

A. No, no, sir.

RCQ106. By "No, sir" you mean they will not give force and effect?

5450

A. They give force and effect to each and every judgment, with the exception of any judgment which will contain dispositions against the public order. You know what that means?

RCQ107. Yes.

A. Pardon me. And against the rights, the public rights of the Kingdom.

RCQ108. Well, will they give force and effect and recognition to such decrees, orders and judgments if in Italy, by precise rules of Italian positive law contrary legal conclusions have been reached?

5451

A. Yes, sir.

RCQ109. They would still give effect?

A. Yes, sir.

RCQ110. You are positive as to that?

A. I am.

RCQ111. I now call your attention to the opinion of the Court in the Italian litigation found on pages 9 and 10 of Complainant's Exhibit No. 144, which states:

> "The Court, in the previous decision, has already exhausted, forth the motives (which,

in fact, are incontrovertible, because they are settled by precise rules of our positive law) which prevent the recognition in Italy of the legal effect of the decision of July 14th, 1910, of the North American District Court for the Southern District of New York, and of that rendered on appeal on November 15th, 1910, by the Second Circuit Court of the United States, by which, according to the allegations of the defendants, the lawful right of the Chapmans to call by the name of 'Waterman' the
5453 fountain pens in which they dealt in the territory of that State, had been recognized."

I ask you whether or not that which I have just read does not refer to the Italian law as last laid down by its Courts?

Mr. Watson: Counsel for the complainant calls the Court's attention to the evident intent of the counsel to confuse the witness and the Court by quoting one part of the decision and judgment of the Italian Courts where, in the same decision and judgment,
5454 they set out expressly the reasons why these judgments are not recognized in Italy.

RCQ112. Go ahead and answer that?

A. I cannot answer that unless you read it all there.

RCQ113. Does that which I have just read represent the law of Italy?

A. No, it does not.

RCQ114. Does it represent the opinion of the Court in the particular case, the decree in which has been marked Exhibit 143?

5455

A. I suppose so. If it does not represent the law I do not think I am able to answer you.

RCQ115. Does it represent the law in that particular case?

A. I am not able to determine that. I do not pretend to be qualified as such.

RCQ116. Don't you intend to be qualified to read the opinion of the Italian Court and know what that opinion means?

A. That opinion is translated in English and you can give your own opinion about it.

RCQ117. Did you translate it into English? 5456

A. I did.

RCQ118. Did you correctly translate it?

A. I did.

RCQ119. Why not state whether or not—

A. If it is translated, it speaks for itself; I do not want to give an opinion which is not on the law; I am not in a position to give it.

RCQ120. Did the court that rendered the decree marked Complainant's Exhibit 143, have the right to determine that question of law, to wit, how far the decree or order of our United States District Court and of the United States Circuit Court regarding the effect and validity of the agreement of June 12, 1905, had jurisdiction? 5457

A. Why, the court must abide to the court and the court speaks for itself.

RCQ121. But the court must interpret the code?

A. Yes, sir.

RCQ122. And that is one of the provinces of the Italian Court, to interpret the code?

A. Yes, sir.

Mr. Watson: Calling the Court's attention to the fact that counsel is inquiring

5458 into entirely new matter, he is therefore bound by the answers of the witness.

Further Re-direct Examination by Mr. Watson:

RDQ42. Calling your attention to the judgment, Complainant's Exhibit 143, and to the translation of said judgment at the bottom of page 10 of Complainant's Exhibit 144, I ask you if the court does not there expressly state why it does not give full force and effect to the judgments inquired about by defendant's counsel, in these
5459 words: "Because the North American decisions which were invoked do not even contain by virtue of their very nature of judicial provisions made as the result of summary information in preliminary injunction proceedings, a sure and definite acknowledgment of the right claimed by the defendants. Neither does the judgment of November 15th, 1910, rendered by the Circuit Court of Appeals of New York (to which defendant refers, as that which should be the decisive instrument in the case) resolve anything regarding the question submitted at this time for the decision of
5460 the Italian magistrates." I ask you if that is not a fair translation of the judgment?

A. This is a fair translation, of course.

RDQ43. Now, the judgments of the American courts to which the Italian courts give full force and effect are final judgments?

A. Certainly.

RDQ44. They are not preliminary judgments?

A. No, no.

RDQ45. And is that the reason which the court gives for not accepting the judgments or decrees of the Circuit Court of July 14, 1910, and November

15, 1910, because they are preliminary interlocutory judgments?

A. Yes, sir.

RDQ46. In answering counsel's question regarding the force and effect of American judgments in Italy, you were referring to the Italian Code of Civil Procedure, were you not?

A. Yes, sir.

RDQ47. And you stated in your answers the substance of the provision of the Italian Code of Civil Procedure, respecting the force and effect of foreign judgments in Italy? 5462

A. Yes, sir.

RDQ48. How long have you been in the United States?

A. Well, I have been in the United States several times. All told, do you mean?

RDQ49. Yes, sir.

A. I have resided here for about ten or eleven years, I think.

RDQ50. And during that time have you given any attention or study to Italian Law or Italian codes?

A. Why, many times I have sent judgments of 5463
these courts to Italy so that they could be enforced.

RDQ51. And did you ever know of a case where you sent an American judgment to Italy to have it enforced when it was not enforced.

Mr. Stein: Objected to as immaterial.

A. Why, certainly. Every judgment I sent there has been enforced; that is a fact. Of course, I have to take the—

Mr. Stein: Well, Mr. Watson, was not on the other side in any of those cases, was he?

The Witnes: That is right; I done that.

RDQ52. This judgment, Complainant's Exhibit 143, is such a judgment as is in force and effect and could be and can be enforced and put into execution in Italy at the present time, is it not?

A. Yes, sir.

Further Re-cross Examination by Mr. Stein:

5465 RCQ122. Do I understand correctly that the Italian courts would give no effect or heed to decisions of our United States District Court and United States Circuit Court, interpreting a written contract made in the United States between citizens of the United States doing their business in the United States and relating to the business being carried on in the United States unless—which interpretation would merely constitute a question of law—unless it was in final form or in a final judgment; is that correct?

A. Yes, sir.

5466 RCQ123. So that a pure question of law, to wit, the construction of a written contract of such a kind when passed upon by the United States District Court and by all the judges of the United States Circuit Court would not be given effect or heed in Italy unless it were in the nature of a final judgment?

A. The only answer I can give you is by referring to the Code. That is all I can say.

Mr. Watson: And what does the Code provide?

Mr. Stein: As to that?

Mr. Watson: Yes.

5467

RCQ124. See just what foreign decrees are given faith. Look at your Code, although you probably won't find it in your Code?

A. The judgment will be enforcible as far as its execution is concerned, provided it is enforcible as to the execution thereof in the country where it has been rendered. That is satisfactory, is it not?

RCQ125. Yes, that is satisfactory.

A. All right. It is Section 941 of the Code of Civil Procedure, Note No. 3.

RCQ126. What you have just read from the Code is merely an annotation from the Code? 5468

A. Yes, sir. It is what we call jurisprudence.

RCQ127. You know what our Annotated Code is?

A. Yes.

RCQ128. So that is merely an annotation, and not part of the code?

A. Yes, sir.

By Mr. Watson: That means that is a question that has ben determined by the Italian Courts?

A. Certainly.

Q. As to the extent a foreign judgment will be enforced in Italy?

A. Yes, sir. 5469

By Mr. Stein:

Q. Do you mean that was simply an annotator's note as to what he thinks has been decided or should be decided?

A. Oh, no; that is what has been decided.

Deposition closed.

The signature of the witness to the foregoing deposition was waived by consent of counsel.

5470 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Complainant,

vs.

MODERN PEN COMPANY,
Defendant.

5471 I, William H. K. Davey, DO HEREBY CERTIFY that the foregoing proofs for final hearing were taken before me in the above entitled cause on behalf of the complainants, under and pursuant to the order of the Hon. Alfred C. Coxe, made and entered in the above entitled cause on the 16th day of November, 1911.

I do hereby further certify that I am not of counsel nor attorney for either of the parties, nor in any wise interested in the event of the cause.

I DO HEREBY FURTHER CERTIFY that
5472 Samuel S. Watson, Esq., appeared on the part of the complainant, and that Morton Stein, Esq., appeared on behalf of the defendant at the taking of the said proofs.

Dated, New York, November 18th, 1911.

At a Stated Term of the United States Circuit Court for the Southern District of New York, held in the Main Post Office Building, on the 16th day of November, 1911. 5473

Present—Hon. ALFRED C. COXE, United States Circuit Court Judge.

L. E. WATERMAN COMPANY,
Plaintiff,

against 5474

MODERN PEN COMPANY,
Defendant.

The petition of the plaintiff to reopen the proofs in the above entitled action having duly come on to be heard and after hearing Samuel S. Watson, Esq., of counsel for the petitioning plaintiff in support of said petition, and Alexander S. Bacon, Esq., of counsel for the defendant in opposition thereto, and upon reading and filing said petition, verified the 18th day of October, 1911, and the exhibits 5475 thereto annexed, and submitted to the Court therewith, it is

ORDERED that the plaintiff be and hereby is permitted upon payment of twenty-five ($25.00) dollars costs to the defendant to reopen said proofs for the purpose of permitting plaintiff to introduce in evidence a certified copy of a certain opinion, judgment and decree of the Royal Civil and Penal Court of Milan, Italy, in the Italian language, submitted to the Court upon the hearing of said

5476 petition and marked by the Court "Exhibit A" and also a fair translation of the same into the English language and without prejudice to the plaintiff to move the Court upon final hearing for permission to introduce oral testimony of lawyers not to exceed two versed in Italian law for the purpose of showing the force and effect accorded in Italy to judgments, orders and decree of Circuit Courts of the United States of America, and also for the purpose of showing that said judgment and decree (Exhibit A) is a final judgment.

If the judge at final hearing deems such testi-
5477 mony competent and necessary the defendant may make a similar application to be permitted to reply thereto by calling an equal number of lawyers versed in Italian law.

ALFRED C. COXE
U. S. Cir. Judge.

U. S. Cir. Court, filed Nov. 16, 1911,
JOHN A. SHIELDS, Clerk.

5478

1827

PLAINTIFF'S EXHIBIT No. 143.

CANCELLERIA DEL TRIBUNALE DI MILANO

N. 11337 Reg. Copie

Esatto Lire 27.

Milano, 2 Agosto 1911.

*Il Cancelliere*
C. N. J.

# In nome di S. M. Vittorio Emanuele III.

PER GRAZIA DI DIO E PER VOLONTA' DELLA NAZIONE RE D'ITALIA

SEZIONE PRIMA

riunito nelle persone degli Illustrissimi

Avv. RAIMONDI cav. uff. ANTONIO, *Presidente*,
Avv. BANZI ALBERTO, *Giudice*,
Avv. CASATI ETTORE, *Giudice estensore*,

ha pronunciato la seguente

## SENTENZA

*nella causa commerciale sommaria, promossa con atto di citazione in data* 2 *luglio* 1910 *a ministero dell'ufficiale giudiziario addetto a questo Tribunale Ranzini, e con atto di citazione, in ripresa d'istanza, in data* 5 *maggio* 1911 *a ministero dell'ufficiale giudiziario Frigerio, addetto al Tribunale civile e penale di Milano.*

TRA

*la* SOCIETA' L. E. WATERMAN COMPANY, *avente sede in New York, in persona del suo Presidente*

1828

FRANK WATERMAN, *elettivamente domiciliata in Milano, in via Amedei, n. 3, presso e nello studio del suo Procuratore signor avv. Rodolfo Maroni, dal quale è rappresentata in giudizio per mandato 4 luglio* 1910, *in autentica dott. Giulio Musso, notaio residente in Grugliasco, debitamente legalizzato dal Presidente del Regio Tribunale di Torino, coll'avvocato* EDOARDO BOSIO, ATTRICE.

CONTRO

CABRINI GUIDO, *residente in Milano ed elettivamente domiciliato in via San Paolo, n.* 11, *presso e nello studio dei suoi Procuratori signori avvocato* ALESSANDRO ABBOVE *e* LORENZO BANK, *dai quali è rappresentato in giudizio per mandato* 6 *luglio* 1910, *in autentica dott. Ennio Groppelli, notaio residente in Milano,* CONVENUTO,

CON INTERVENTO DELLA

SOCIETA' A. A. WATERMAN E C. *tvente sede in New York, in persona dei suoi componenti signori* ISAAC E. CHAPMAN *e* WILLIAM L. CHAPMAN, *elettivamente domiciliata in Milano, via San Paolo, n.* 11, *presso e nello studio del suo Procuratore avv.* ALESSANDRO ABBOVE, *dal quale è rappresentata in giudizio per mandato* 18 *novembre* 1910, *in autentica dott. Joseph Statermayer, pubblico notaio residente in New York.*

OGGETTO

USURPAZIONE DI RAGIONE SOCIALE

Intesa la relazione e discussione della causa, fatta alla pubblica udienza del giorno 22 giugno 1911 dai signori Procuratori delle parti, i quali, nell'interesse dei loro clienti, prendevano le seguenti rispettive

## CONCLUSIONI

Il Procuratore della Ditta attrice chiese e concluse:

Piaccia al Tribunale Ill.mo,

Dichiarato in base alla sentenza 1. aprile 1911 di questo Tribunale Ill.mo che l'atto 12 giugno 1905, da cui si pretende dal convenuto Cabrini e dagli intervenuti Isaac e William L. Chapman derivare il diritto all'uso del nome "*A. A. Waterman*", è inefficace alloscopo medesimo nei rapporti colla Compagnia L. E. Waterman, ed in relazione agli articoli 5 e 12 della legge 10 agosto 1868 ed agli articoli 296 e 297 codice penale, 1151 codice civile.

Pronunciando definitivamente:

Dichiarare che il Cabrini Guido, tanto in proprio che quale rappresentante delli Isaac e William L. Chapman, non poteva e non può usare legittimamente dei nomi "*Watermann*", "*Waterman's*", "*A. A. Watermann*", "*Waterman Modern*", "*Waterman's Modern Fountain Pen*" per introdurre in Italia o per rendervi penne stilografiche e per iscopo di *rèclame*, e che l'uso di dette denominazioni, o nomi, costituisce usurpazione od imitazione della denominazione o ragione sociale della Società attrice, ed è atto "ad indurre in inganno i compratori sull'origine del prodotto", costituendo, comunque, concorrenza sleale e dolosa.

Ordinare la confisca di tutti gli oggetti, prodotti e *rèclames* portanti una di tali denominazioni e segni.

Condannare il Guido Cabrini ,tanto in nome proprio che quale rappresentante di Isaac e William L. Chapman, ai danni da liquidarsi in prosecuzione di causa, ammettendo, fin d'ora, gli infratenorizzati capitoli di prova testimoniale.

Con sentenza provvisoriamente esecutiva.

## CAPITOLI DI PROVA TESTIMONIALE

*A*) Che, dopo che il Cabrini mise in commercio col nome di "*Waterman*" o "*Waterman Modern*" le penne

dei signori Isaac e William Chapman, molti compratori di esse si presentarono e si presentano tuttora all'ufficio del signor Carlo Drisaldi, depositario generale delle penne stilografiche originali "*Waterman*" della Società attrice, protestando perchè le penne, che hanno comperato, credendole originali "*Watermann*" della Società attrice, non funzionavano o funzionano male;

*B*) Che qualcuno di questi compratori portò la penna così erroneamente comperata, nella scatola in cui era stata loro venduta, scatola che era, invece, quella delle originali penne "*Watermann*" della Società attrice;

I Procuratori del convenuto chiedono e conchiudono:

Reietta ogni contraria istanza, eccezione e deduzione;

Salvo e impregiudicato l'appello contro la sentenza 1-6 aprile 1191 di questo Tribunale notificata il 19 aprile 1911;

Ammesso in via definitiva l'intervento della A. A. Waterman e C.;

Respingersi le domande tutte dalla attrice L. E. Watermann Company spiegate;

Colle spese e coi danni.

*In via riconvenzionale*:

Previe quelle declaratorie che del caso, e specialmente:

*a*) Essere scientemente falsa la affermazione contenuta nell'atto di citazione che "nessuna Ditta A. A. Waterman sussista a New York che possa essere rappresentata dal Cabrini in Italia od in Europa";

*b*) che tanto la citazione che la prodotta circolare, sia unitamente che separatamente, sono state fatte a scopo di sleale concorrenza;

1° Ordinarsi, a norma dell'articolo 398 codice penale e 63 codice di procedura civile, la cancellazione delle seguenti frasi ingiuriose per il loro cliente che si leggono nella citazione 2 luglio 1910, e cioè: "Inoltre questa de-"nominazione costituisce una truffa ed una frode in "commercio.

" E finalmente nessuna Ditta A. A. Waterman sus-
" siste a New York, che possa essere rappresentata dal
" Cabrini in Italia od in Europa.
" Anche e sopratutto come falsa designazione di una
" Ditta non esistente".

Conseguentemente condannarsi l'attrice Società L. E. Waterman nei danni, a favore del convenuto, salvo poi liquidarli in continuazione di giudizio e salvo al Tribunale di liquidarli come esso meblio sarà per arbitrare.

2° E previa, occorrendo, ammissione delle prove di cui infra, condannarsi l'attrice nei danni tutti morali e materiali causati al convenuto.

Sempre con le spese e con sentenza esecutiva.

## TENORE DELLE PROVE PER TESTI.

1° Vero che l'attrice, a mezzo eei suoi agenti e dipendenti, sparse la voce nel pubblico e fece credere che il Cabrini Guido non potesse vendere le sue penne stilografiche, ed in ispecie la " Modern Fountain Pen ", perchè costituenti contraffazioni dei marchi della L. E. Waterman, e che coloro che avessero comprato penne del Cabrini o le avessero rivendute, si esponevano a gravissimi danni morali e materiali, perchè le penne sarebbero state sequestrate, e tenuti responsabili coloro che le avevano commerciate;

2° Vero che per rendere più verosimile il fondamento delle minaccie, ed impedire così la vendita delle penne del Cabrini, venivano invocate e la citazione già spiccata dalla L. E. Waterman e Company e le circolari diramate, circolari da rammostrarsi ai testi;

3° Vero che gravissimo fu il danno per tali fatti risentito dal Cabrini che dall'agosto 1910 in poi si vide ostacolata la vendita delle penne e non potè continuare a darvi quell'incremento che egli aveva ragione di ripromettersi;

4° Vero che il Cabrini, per sè ed a mezzo dei suoi agenti, non solo non cercò mai di far credere al pubblico

od agli altri acquirenti che la penna stilografica, da lui specialmente venduta sotto il nome di *"Modern Fountain Pen"*, fosse costrutta dalla L. E. Waterman Company ma anzi si sforzò sempre ed in tutti i modi di far sapere il contrario, vantando sempre la evidente maggior praticità ed utilità di tale penna su quelle della L. E. Waterman e Company;

5° Che sempre ed in ogni caso il Cabrini diede in tal senso precise istruzioni ai suoi dipendenti e compratori;

6° Vero che la maggiore *rèclame* esercitata dal Cabrini è fatta per mezzo di cassette speciali ad uso vetrine, contenenti n. 24 penne. Che tali cassette-vetrine sono precisamente uguali a quella prodotta in causa, e da rammostrarsi a testi. Che in detta cassetta-vetrina, e nella parte costituente l'alzata, havvi l'iscrizione *" The Modern Fountain Pen "* con sotto *" A. A. Waterman e C."*. Che tali diciture stanno in mezzo a due cerchi in cui, sopra uno sfondo bleu ed argento, campeggiano in rosso le lettere: *"A. A."*, mentre in campo bleu ed in bianco, sono scritte le parole: *"The Mark Of."*. Sotto ed in campo d'argento e bleu, stanno scritte le parole: *"The initials"* mentre nel fondo sul campo bleu è scritta in bianco la parola: *"Superiority"*. Nell'interno della cassetta poi, e sul velluto rosso, in oro ed in grande è scritta la parola:*"Modern"*. Parola che è ripetuta sui due lati della cassetta all'interno. Di fronte poi la cassetta porta la dicitura: *" The Modern Fountain Pen ";*

7° Vero che la L. E. Waterman Company non costruisce essa completamente le penne che mette in vendita, ma ne compera le varie parti da diverse Ditte e poi le riunisce;

8° Vero che la A. A. Waterman e C. invece costruisce essa tutte le parti delle penne che mette in vendita;

9° Vero che la L. E. Waterman Company comperò direttamente dalla Modern Pen Company, che è l'unica Società autorizzata in America a vendere le penne della A. A. Waterman e C., ben 500 *Modern Fountain Pens;*

10° Vero che i brevetti tutti della L. E. Waterman

Company di New York sono da tempo scaduti, per quanto riguardano le penne a serbatoio da lei vendute, mentre sono ancora in pieno vigore i brevetti della A. A. Waterman e C. per quanto riguarda la *Modern Fountain Pen*.

PER PERIZIA

Vero che la penna venduta dal sig. Guido Cabrini, sotto la denominazione "*Modern Fountain Pen*", sia per la materia, sia per la forma, sia pel modo con cui è fabbricata, è di gran lunga superiore per resistenza, utilità e praticità alle penne messe in vendita dalla Ditta L. E. Waterman Company.

Il Procuratore dell'interveniente Società A. A. Waterman

CHIEDE E CONCHIUDE:

Reietta ogni contraria istanza, eccezione e deduzione:

Dichiararsi definitivo l'intervento della A. A. Waterman e C. nella causa fra Cabrini Guido e la L. E. Waterman Co., con accogliersi le conclusioni tutte dal Cabrini spiegate.

Con le spese e coi danni.

FATTO

FRANK WATERMAN nella sua qualità di Presidente della Società L. E. WATERMAN corrente in New York per la fabbricazione ed il commercio delle penne stilografiche chiede col presente giudizio declaratoria di giuridica inefficacia dell'atto 12 giugno 1905 (registrato a Milano il 9 marzo 1911, dal n. 22975 al 22986 con lire 14,60), in forza del quale Guido Cacrini ha fatto uso, sino ad oggi, in Italia, del nome di "*A. A. Waterman*" per il commercio delle penne stilografiche, in concorrenza a quello dello stesso genere esercitato dalla Ditta L. E. Waterman, e conseguentemente quelle inibitorie e condanne che sono portate dagli art. 5 e 12 della legge 10 ago-

sto 1868 e degli art. 1151 codice civile, 370 codice procedura civile, come effetto di questo abusivo esercizio.

Il giudizio veniva iniziato con atto di citazione 2 luglio 1910, e sostenendo il Cabrini la legittimità di quest'uso per essere egli il rappresentante di una Ditta americana denominata anche essa *"A. A. Waterman e C."*, vi intervenivano i componenti questa Ditta (Sigg. Isaac e William L. Chapman) per sostenere e corroborare l'assunto del loro rappresentante italiano.

Questo Tribunale con sua sentenza 1-6 aprile 1911 riconosceva la legittimità di questo intervento, avendo però cura di disciplinarne la portata, secondo gli inconcussi principii di diritto processuale, nel senso dell'inestensibilità, nei confronti degli intervenienti, delle domande dalla Ditta L. E. Waterman proposte contro il Cabrini con l'atto istitutivo del contraddittorio. In secondo luogo riconosceva l'irrilevanza in causa, per evidente difetto di efficacia giurisdizionale in Italia, di alcune sentenze dei Tribunali nord-americani dimesse dal Cabrini e dagli intervenienti a sostegno della asserita legittimità dell'uso da essi fatto del nome *"Waterman"* per designare le penne stilografiche del loro commercio; finalmente disponeva la giudiziale produzione dell'atto sociale 12 *giugno* 1905 da cui il Cabrini e gli intervenienti pretendono derivare il diritto all'uso di quella denominazione, affinchè, dal suo esame, questo Tribunale sia posto in grado di giudicare se i convenuti, in virtù di esso, sieno stati *"legittimamente, seriamente ed effettivamente investiti del diritto di portare il nome di Waterman, oppure se vi sia in mezzo una frode da reprimere"*.

I convenuti ottemperavano al provvedimento giudiziale producendo quell'atto, e così la causa poteva venire riassunta e portata, con tutte le conclusioni superiormente trascritte, al definitivo giudizio di questo Tribunale nell'udienza del 22 giugno p. p.

## DIRITTO

Già nella precorsa sentenza il Collegio ha, esaurientemente, esposto i motivi (del resto incontrovertibili perchè fissati da norme puntuali del nostro diritto positivo) che impediscono di riconoscere in Italia efficacia giurisdizionale alle sentenze 14 luglio 1910 della Corte distrettuale nord-americana per il distretto meridionale di New York, e 15 novembre 1910 in sede d'appello della seconda Corte circolare degli Stati Uniti che, secondo l'assunto dei convenuti, avrebbero riconosciuto il buon diritto dei Chapman di chiamare "*Waterman*" le penne stilografiche di cui fanno commercio nel territorio di quello Stato. Alla questione riproposta dai convenuti in questa seconda fase di giudizio, il Tribunale non può rispondere che richiamandosi al suo precedente giudicato, rilevando però soltanto l'equivoco nel quale è incorso il patrocinio del Cabrini coll'attribuire all'Ottolenghi l'opinione che si possa, alle sentenze straniere, riconoscere efficacia giurisdizionale in Italia, anche in difetto del prescritto atto di accertamento da parte dei nostri organi giurisdizionali.

Nella nota controversia dottrinale, se effetto del giudizio di delibazione sia quello di ammettere la sentenza straniera a operare nel nostro Stato, oppure di emanare un atto giurisdizionale che accerti ed attui, per virtù propria, nello Stato quello che il giudice straniero ha potuto con la sua sentenza validamente accertare ed attuare nel proprio Stato, l'Ottolenghi, nell'invocato scritto, dichiara di accogliere la prima opinione. In questo senso, e ristretta a questa disputa, va interpretata la frase di quello scrittore che il Cabrini ha creduto di potere, isolatamente, citare a sostegno di una proposizione manifestamente errata, e cioè che una sentenza straniera, *non riconosciuta*, possa avere giuridica esistenza di fronte ai Tribunali italiani.

E l'opposta norma il Collegio con animo tanto più tranquillo applica alla presente controversia, in cui non v'è

pericolo che il rigore formalistico dei principii contrasti colla equitativa opportunità della pratica soluzione; imperocchè neppure le invocate sentenze nord-americane, per la loro stessa natura di provvedimenti giudiziarii, emanati a seguito di sommarie informazioni in una procedura *"preliminare d'ingiunzione"*, contengono un sicuro e *definitivo* riconoscimento del diritto preteso dai convenuti.

Nè la stessa sentenza 15 novembre 1910 della Corte circolare d'appello di New York (a cui il convenuto si richiama, come a quello che dovrebbe essere il documento decisivo della causa) nulla risolve relativamente alla questione sottoposta oggi al giudizio dei magistrati italiani. Vi si legge infatti: *"essere evidente che la Società di cui Arturo A. Waterman era membro aveva il diritto di far uso del nome 'A. A. Waterman e C." in relazione alla propria azienda e di così marchiare le proprie penne"*; ma per arrivare a questa certamente inovviabile conclusione, lo stesso magistrato americano ha cura di soggiungere che ogni suo giudizio si fonda, ALLO STATO DEGLI ATTI, sulla SUPPOSIZIONE *che la Società A. A. Waterman e Company* ABBIA IL DIRITTO, *a termini del contratto con Arturo A. Waterman, di far uso di quella Ditta.*

Ora è appunto questo l'oggetto (non risoluto dalla Corte New-yorkese) dell'indagine oggi sottoposta all'esame di questo Tribunale: vedere, cioè, se possa ritenersi che, a termini del contratto 12 giugno 1905, Arturo Waterman sia entrato a far parte di quella azienda in modo "REALE, SERIO, ed EFFETTIVO", sì da conferirle il diritto di assumere il suo nome nella ragione sociale.

Spetta ora, dunque, a questo Tribunale di rispondere, in base all'esame del prodotto atto sociale 12 giugno 1905 a tal quesito, vedere, cioè, come si esprime la precedente sentenza, se con quell'atto i signori Chapman siano stati "LEGITTIMAMENTE, SERIAMENTE ed EFFETTIVAMENTE" investiti del diritto di usare, per la denominazione della loro Ditta, della ragione *"A.A. Waterman"*,

oppure se la cessione di questo nome sia il portato di un *artifizioso e fraudolento accordo.*

Ora, sembra al Collegio che non vi sia bisogno di ricorrere alle dichiarazioni rese nel 14 settembre 1910 dallo stesso Arturo Waterman nel suo interrogatorio *"de bene esse"* davanti la Corte circolare degli Stati Uniti (distretto meridionale di New York), ma basti l'esame dell'atto anzidetto perchè si debba riconoscere, senz'altro, che, con quel trasparente accordo, i signori Chapman, no naltro stipularono con Arturo Waterman che la *cessione di un nome.* Questa è la sola pattuizione che, con grande meticolosità di rigorosissime clausole precauzionali, campeggia in quell'atto e costituisce evidentemente per le parti l'UNICA FINALITA' del contratto. Infatti, già le inconsulte e significative disposizioni relative al conferimento (sotto forma di mutuo al tasso del 6 per cento con prelazione sugli utili) del capitale sociale; la assoluta esclusione del Waterman — socio a responsabilità illimitata — da qualsiasi ingerenza nell'amministrazione sociale e la singolare posizione a lui fatta di *cliente* della Società per la fornitura delle penne da smerciarsi nel *Far West,* dànno a questo contratto di società un così stravagante significato, da lasciare fortemente dubitosi della serietà e sincerità delle parti che vollero porlo in essere.

Ma la conclusione anzicennata sgorga irresistibilmente dal patto 9.o che, nell'economia dell'atto, segue quello gravemente vincolativo circa il trasferimento IRREVOCABILE e PERPETUO alla Società dell'uso del nome di *"A. A. Waterman"*. Con questa clausola, si accorda ad Arturo Waterman la facoltà di intraprendere entro il 1.o luglio 1906 per proprio conto, nel territorio occidentale del Nord America, il commercio delle penne stilografiche, stabilendosi però che *"in tal caso egli cessi dall'avere interessenza alcuna nella Società con quell'atto costituita"*, la quale apparterrà esclusivamente ai Chapman ed eredi: ma vi si aggiunge che se di questa facoltà entra il termine suddetto il Waterman non si valga *"egli cesserà nello*

*stesso modo ed in ogni rispetto istessamente dal far parte della Società come se di quelle facoltà egli si fosse valso".*

In sostanza, nello stesso istante in cui il Waterman veniva assunto in Società con i Chapman, con quel patto si stabiliva la di lui ESCLUSIONE dalla Società stessa, IN OGNI CASO E NEL TERMINE PERENTORIO DI UN ANNO. Si veniva cioè a distruggere, *a priori*, la condizione di uno degli elementi essenziali del contratto, e cioè dell'*affectio societatis*, riposante sulla uguaglianza della situazione contrattuale dei soci rispetto al fine comune, e quindi a togliere al contratto il motivo, giuridicamente sufficiente, a costituirne *la causa*.

I vantaggi con quel contratto promessi al Waterman il compenso accordatogli (veramente inesplicabile in un paese di grande libertà commerciale come il Nord America) di sfruttare il *West*, costituiscono per i Waterman il corrispettivo di una prestazione che è necessariamente *estranea* al contratto di società, perchè di questa le parti nei suoi riguardi pattuirono lo *scioglimento* nell'istante medesimo in cui la costituivano.

E siccome l'unica prestazione che in quel contratto il Waterman si assume, è quella di cedere l'uso del proprio nome patronimico, non v'ha dubbio che questa cessione costituisce la SOLA E VERA MATERIA DELL'ACCORDO, il quale, in tanto i Chapman s'inducevano a stipulare, in quanto sapevano che l'uso di quella denominazione avrebbe potuto metterli in condizione di vantaggiosa concorrenza verso 'autentica Ditta L. E. Waterman, e questa cessione di nome simulavano sotto le mendaci apparenze di un contratto di *società*, conoscendone l'illiceità.

Conclusione questa alla quale gli invocati precedenti storici di quell'accordo nulla conferiscono in contrario.

Si afferma che all'atto 12 giugno 1905 i Chapman addivennero, allo scopo di riorganizzare la loro azienda dopo l'uscita del socio Frazer; ma questo supposto intendimento delle parti non può mutare la portata giuridica

dell'atto, quale risulta dai suoi termini sopra rilevati. — Questi, nella significativa semplicità della forma adottata, non consentono di ritenere che materia d'accordo fosse l'aspetto di un organismo, già legittimamente esistente, sotto la ragione "*A. A. Waterman*," perchè non vi ha una sola disposizione in quel contratto che regoli la sorte di quel patrimonio complessivamente costituito di perfezione industriale, di ritrovati, di avviamento, che, necessariamente, avrebbe pur dovuto raccogliersi sotto l'egida di un nome già commercialmente consolidato. Qualunque possano essere stati i rapporti in precedenza intercorsi fra le parti, è un'azienda, *ex novo*, che sorge originariamente da quell'atto; un'azienda alla quale il Waterman, secondo il contratto, non conferisce alcuno di quegli elementi della propria personalità tecnica, commerciale, che soltanto avrebbero potuto legittimare la cessione alla Ditta di un nome ad essa inscindibilmente legato. Egli v'interviene solo per apportarvi il proprio nome, non perchè significhi o racchiuda un'entità economica concreta, ma per l'equivocità della fortunata omonimia che rappresenta; e dopo questa cessione egli subito deve ABBANDONARE la Società ed allontanarsene, per le vaghe e solitarie vicende dell'estremo Occidente.

Se pertanto l'atto 12 giugno 1905 contiene un'obbligazione fondata sopra una causa *falsa* ed *illecita*, d'uopo è concludere che non possa avere alcun giuridico effetto, e non possa quindi attribuire ai convenuti il diritto di usare di quella denominazione, sia isolatameite che congiunta con altre di fantasia, per contraddistinguere le penne stilografiche del proprio commercio, in concorrenza con l'omonima rivale.

Bene, a diritto, insorge quindi la L. E. Waterman contro il convenuto su questo uso illecito della propria denominazione, la cui repressione è indipendente da ogni esame sulla superiorità tecnico-industriale delle rispettive penne stilografiche, perchè il nome di "*Waterman*", nel comune linguaggio, non ancora si è venuto identificando col prodotto che costituisce la specialità della Ditta che,

per la prima, la lanciò sul mercato, ma rappresenta la rinomanza e la specialità che in questo commercio essa seppe acquistare; e quindi fa parte dei suoi diritti patrimoniali e come tale merita tutela contro l'illegittimo uso che altri ne fanno.

E poichè debbonsi, perciò, accogliere le istanze principalmente proposte dall'attrice, che rappresentano la naturale sanzione della patita violazione ed ammettersi all'esperimento i due capitoli di prova testimoniale diretti ad accertare quella confusione fra i prodotti dei contendenti, che è elemento di danno risarcibile, come conseguenza della sleale concorrenza costituita da quella usurpazione di nome.

Che, conseguentemente, le domande riconvenzionalmente proposte dal convenuto Cabrini debbonsi tutte respingere per il noto principio: *qui jure suo utitur neminem laedit.*

Che è il caso di riservare al definitivo le spese di giudizio.

Visto l'articolo 409 codice di procedura civile;

Per questi motivi:

Ogni diversa istanza respinta;

Il Tribunale;

Dichiara l'illegittimità dell'uso fatto da Cabrini Guido, tanto in proprio che quale rappresentante delli Isaac e William Chapman dei nomi di *"Waterman"*, *"Waterman's"*, *"A. A. Waterman"*, *"Waterman Modern"*, *"Waterman's Modern Fountain Pen"* per introdurre in Italia e per vendervi penne stilografiche e per iscopo di *rèclame.*

Costituire l'uso di dette denominazioni usurpazione della ragione sociale della Società attrice ed atto di concorrenza sleale.

Ordina la confisca di tutti gli oggetti, prodotti e *rèclames* portanti una di tali denominazioni e segni.

Costituire l'uso di u'inc'l?fi12t.icFrset

Ammettersi, per quant'altro, la Ditta Compagnia L. E. Waterman di New York a provare per testimoni le circostanze tenorizzate nei due capitoli delle sue conclusioni, che si dànno per qui letteralmente trascritte, delegandosi l'estensore all'assunzione della prova.

Spese riservate.

Clausola concessa.

Così deciso dalla 1.a Sezione del tribunale civile penale di Milano, oggi primo luglio millenovecentoundici (1.o luglio 1911).

*All'originale firmati*: RAIMONDI BANZI—CASATI, *est.*

PEZZATI, *V. C.*

La presente sentenza venne dal sottoscritto pubblicata all'udienza d'oggi 13 luglio 1911 avanti la Sezione 1.a

*Il Cancelliere*, firmato: PEZZATI.

Registrata a Milano addì 19 luglio 1911, n. 1015, vol. 450, *Atti giudiziari*. Esatte lire nove e cent. 15.

*Il Ricevitore*, firmato: MONTIGLIO.

We command all the sheriff's officers who are called and any others who duty it is, to put this present sentence in execution, and the public minister to give his assistance, and the commanders and officials of the public force to co-operate with it, whenever they are legally called.

La presente prima copia in forma esecutiva è conforme all'originale e si rilascia all'Attrice.

Milano, 2 Ago. 1911.

Il V. Cancelliere
*Moreni.*

Visto per la legalizzazione della firma *Moroni*, V. C., Milano, 2 Agosto 1911.

Il Presidente
*Granati.*

1842

CITY OF MILAN )
KINGDOM OF ITALY ) ss:

American Consulate,

August 2, 1911.

I, the undersigned, Consul of the United States at Milan, do hereby certify that the signature and seal of President of Civil & Penal Tribunal of Milan attached to the annexed document are his true and genuine signature and seal, to the best of my knowledge and belief.

Given under my hand seal the day and year above written.

*Chas. Caughy*

Consul of the United States of America
(Seal of the U. S. Consulate)

American Consular Service Stamp.

Fee $2,00 cancelled August 2nd, 1911.

Seal of the U. S. Consulate at Milan

Fee No. 224.

Lit. 10,40 — $2,00.

PLAINTIFFS EXIBIT NO. 144.

Stamp of
Cav. Edoardo Bosio,
Attorney-at-Law,
Via Genova No. 27.
Turin.

Stamped sheet of
the Province of
Turin. Value 3 Lire
plus 20 per cent and 2 per cent
additional.

Exhibit A
Acc.

No. 3054 sent
No. 3419 R.

Stamp of the Clerk of the
Court of Milan No. 11337.
Copy registered. 4 copies
made. Fee exacted, 27 Lire.—
Milan, August 2nd, 1911.
(Signed) illegible, Clerk.

IN THE NAME OF H. M. VICTOR EMANUEL III.
BY THE GRACE OF GOD AND THE WILL OF THE
NATION KING OF ITALY.

(Stamp of the Civil and
Penal Court of Milan).

The Royal Civil and Penal Court of Milan.

PART ONE.

Constituted by Hon. Cav. Raimondi Antonio, Attorney-at-Law, Presiding Judge, Hon. Banzi Alberto, Attorney-

at-Law, Judge, Hon. Casati Ettore, Attorney-at-Law, Recording Secretary, Judge, HAS HANDED DOWN THE FOLLOWING DECISION in the summary commercial action, brought by writ of summons, under the date of July 2nd, 1910, served by Bailiff Ranzini,an officer of the Court, and by another writ of summons served in renewal of the action under date of May 5th, 1911, by Bailiff Frigerio, an officer of the Civil and Penal Court of Milan.

RE

The L. E. WATERMAN CO. a firm doing business in New York, represented by its president FRANK WATERMAN who has elected domicile in Milan, at No. 3 via Amedei, with and in the office of his attorney, Mr. Rodolfo Maroni, who legally represents the company, in virtue of a power of attorney executed on July 4th, 1910, before Giulio Musso a Notary Public residing in Grugliasco, and duly certified by the President of the Royal Court in Turin, in conjunction with Eduardo Bosio, Attorney-at-Law — PLAINTIFF

VERSUS:

Guido Cabrini, a resident of Milan, who has elected domicile at No. 11, via San Paolo, with and in the office of his attorneys, Messrs. Alessandro Abbove and Lorenzo Bank, Attorneys-at-Law, by whom he is legally represented, in virtue of a power of attorney, dated July 6th, 1910 and executed before Dr. Ennio Groppelli, a Notary Public residing in Milan — DEFENDANT

WITH THE INTERVENTION OF THE FIRM OF

A. A. Waterman and Company, doing business in New York, in the persons of its members, Messrs. Isaac E. Chapman, and William L. Chapman, and which elected domicile in Milan, at No. 11, via San Paolo, with and in the office of its attorney Alessandro Abbove, attorney-at-law, by whom it is legally represented in virtue of a

power of Attorney dated November 18th, 1910, and executed before Mr. Joseph Statermayer, a Notary Public, residing in New York.

OBJECT OF THE ACTION:
UNLAWFUL USE OF FIRM NAME.

Considering the statement and arguments in the case, presented at the public hearing of June 22nd, 1911, by the attorneys of the parties, which attorneys acting respectively on behalf of their clients, came to the following

CONCLUSIONS:

The attorney of the said plaintiff pleaded and summed up as follows:

May it please the Court:

WHEREAS IT HAS BEEN DECLARED as the ground for the judgment of April 1st, 1911, rendered by this Hon. Court, that the contract of June 12th, 1905, from which the defendant Cabrini and the interventors Isaac and William L. Chapman, claim to derive the right of using the name of "A. A. Waterman", is not available for such purpose in respect to dealings with the L. E. Waterman Company, and in reference to Arts. 5 and 12 of the law of August 10th, 1868 and Articles 296 and 297 of the penal code and 1151 of the civil code.

NOW WHEREFORE AND BY FINAL JUDGMENT

To declare that Guido Cabrini, either on his own account or as representative of Isaac and William L. Chapman, could not and cannot legitimately assume the names "Watermann", "Waterman's", "A. A. Watermann", "Waterman Modern", "Waterman's Modern Fountain Pen" for introducing fountain pens in Italy or for selling same in said country, for ADVERTISING them, and

that the use of the aforesaid name, or names, constitutes unlawful use or imitation of the names or firm name of the plaintiff Company, and that it is an act "tending to lead buyers in error regarding the origin of the product" and constitutes as such an act of unfair and fraudulent competition.

To order the confiscation of all articles, products and ADVERTISING MATTER bearing any such name or inscription. To condemn the said Guido Cabrini, both on his own account and as representative of Isaac and William L. Chapman, in the damages to be determined in the proceedings in this action, and to admit at this stage of the proceedings the interrogatories for the taking of testimony of witnesses, hereinafter set forth.

This judgment to be provisionally executable.

INTERROGATORY FOR THE TESTIMONY OF WITNESSES.

A) THAT since the said Cabrini placed the pens of Messrs. Isaac & William Chapman on the market, under the name of "Waterman" or "Waterman Modern", many buyers of these pens called and are still calling at the office of Mr. Carlo Drisaldi, general representative of the original "Waterman" fountain pens of the plaintiff company and keeping same in stock, and protested that the pens which they bought in the belief that they were original "Watermann" pens of the plaintiff Company, did either not work at all, or they worked badly.

B) That some among the buyers brought along the pen thus erroneously purchased, in the box in which it was sold to them, such box being, in fact, one belonging to an original "Watermann" pen of the complainant company.

The attorneys for the Defendant pleaded and summed up as follows:

That all contrary motions, exceptions and deductions be dismissed; that the appeal against the judgment of

April 1-6, 1911, of this court, notice of which was served on the 19th of April 1911, be sustained without prejudice; that the intervention of the A. A. Waterman & Co. be finally admitted:

That all the demands made by the plaintiff, the L. E. Waterman Company, be rejected with costs and damages.

IN COUNTER-PLEA:

That in view of the statements appertaining to the mater in hand, and more particularly:

a) WHEREAS the allegation contained in the writ of summons purporting that "no such firm as A. A. Waterman exists in New York, which might be represented by said Cabrini in Italy or in Europe", is knowingly false:

b) WHEREAS both the summons and the exhibited circular, whether jountly or severally, have been drawn up with the intention of unfair competition.

1st. The Court may, on the ground of Article 398 of the penal code and Article 63 of the code of civil procedure, order the cancellation of the following phrases which are damaging to their client and which occur in the writ of summons of July 2nd, 1910, to wit: "Furthermore, such name constitutes a swindle and a commercial fraud.

"And finally, there exists in New York no such firm as A. A. Waterman which might be represented by Cabrini in Italy or in Europe.

"Also and, above all, as a false designation of a non-existing firm".

THAT the Court may consequently condemn the plaintiff, the L. E. Waterman Co. in the damages, in favor of the defendant, with the provision that the same may be determined in the further proceedings in the case, and that the Court may determine same as it may be most proper for the award of such damages.

2nd. And that after admission, if necessary, of the evidence hereinafter set forth, the Court may condemn the plaintiff in all damages, both material and moral, suf-

fered by the defendant. Likewise with condemnation in the costs and with executory judgment.

TENOR OF THE INTERROGATORY OF WITNESSES

1) Is it true that the plaintiff spread the report in public, through his agents and employees, and made the public believe that Guido Cabrini could not sell his fountain pens, and especially the "Modern Fountain Pen", because they constituted counterfeits of the trademarks of the L. E. Waterman Co. and that whoever had bought pens from Cabrini or had resold same, were in danger of suffering the most serious moral and material damage, because the pens would be confiscated and those dealing in the same would be held liable?

2) Is it true that in order to render the grounds for the threats more credible and thus to hamper the sale of Cabrini's pens, reference was had to both the writ of summons previously obtained by the L. E. Waterman & Co. and to the circulars that were issued, which circulars are to be exhibited to the witnesses?

3rd. Is it true that the loss caused Cabrini by such proceedings was exceedingly serious and that from August 1910, on, the sale of the pens was impeded and he was no longer to continue to increase his sales to the extent he had reason to expect?

4th. Is it true that Cabrini either in person or through his agents, not only never did attempt to impress the belief on the public or on the other purchasers, that the fountain pen, especially sold by him under the name of "Modern Fountain Pen" was made by the L. E. Waterman Company, but that, on the other hand, he always endeavored, in every possible manner, to let the contrary be known, by always boasting of the evident greater practical value and usefulness of said pen in comparison with those of the L. E. Waterman and Company?

5th. That Cabrini always and in every instance gave

definite instructions to his employes and purchasers to this effect?

6th. Is it true that the best method of ADVERTISING employed by Cabrini was by means of special cases for purposes of display, which contained 24 pens. That such show cases are exactly the same as the ones exhibited in court and to be shown to the witnesses. That on these showcases, and on the part forming the lid, there appears an inscription reading as follows: "The Modern Fountain Pen", and below it "A. A. Waterman & Co." - That these two above mentioned inscriptions appear mid way between two circles, in which are found the letters "A. A." in red, while the words "The Marx of" (*) are written on a blue and white field.

Below, on a blue and silver field the words "The initials" are inscribed, while the word "Superiority" is written in white at the bottom of the blue field. Furthermore, inside the case and on the red velvet, the word "Modern" is inscribed in large letters in gold. This word is repeated on both sides of the case at the inside. Finally, the front of the case bears the wording "The Modern Fountain Pen"?

7th. Is it true that the L. E. Waterman Company does not entirely make the pens which it puts on the market, but that it buys the several parts from various concerns and that it subsequently assembles these parts?

8th. Is it true, on the other hand, that the A. A. Waterman & Co. makes all the parts of the pens which it sells?

9th. Is it true that the L. E. Waterman Company, bought directly 500 Modern Fountain Pens from the Modern Pen Company, which is the only concern in America authorized to sell the pens of the A. A. Waterman & Co.?

10th. Is it true that all the patents of the L. E. Waterman Company of New York have long since lapsed, as

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(*) Presumably meant for "Marks".

far as they concern the fountain pens sold by them, while the patents of the A. A. Waterman & Co. covering the MODERN FOUNTAIN PEN are still in full force?

INTERROGATORY.

Is it true that the pen sold by Mr. Guido Cabrini under the name of "Modern Fountain Pen", is in respect to the material used and in regard to its shape, as well as to the method of its construction, far superior in strength, usefulness and practical value to the pens put on the market by the firm of L. E. Waterman Company?

The attorney of the intervening A. A. Waterman Company Pleaded and summed up as follows:

That all contrary motions, exceptions and deductions be dismissed.

That the intervention of the A. A. Waterman & Co. in the matter of Cabrini Guido and the L. E. Waterman & Co. be declared final, and that all the conclusions pleaded by Cabrini be accepted with condemnation in costs and damages.

FACT:

FRANK WATERMAN in his capacity as President of the L. E. Waterman Company established in New York for the manufacture and sale of fountain pens demands by this present action a decision declaring the legal invalidity of the instrument dated June 12th 1905 (recorded in Milan, under nos. 22975 to 22986, and assessed at Lit.14,60,on March 9th,1911) and in virtue of whichGuido Cabrini has made use in Italy until the present day of the name "A. A. Waterman" in dealing in fountain pens in competition with the same kind of business carried on by the L. E. Waterman Company, and he consequently demanded such injuctions and penalties as are provided for in Articles 5 and 12 of the law of August 10th, 1868 and in Articles 1151 of the Civil Code and 370 of the

code of civil procedure, as a result of such unlawful practice.

The action was instituted by writ of summons of July 2nd, 1910, and as Cabrini maintained the lawfulness of such use in virtue of his being the representative of an American firm also known as "A. A. Waterman e C.", the members of the said firm (Messrs. Isaac & William L. Chapman) intervened to sustain and corroborate the allegation of their Italian representative.

This Court recognized the lawfulness of this intervention by its decision of April 1-6, 1911, taking care, however, to regulate its extent, according to the unalterable principles of legal procedure, in the sense of prohibiting, at the confrontations of the intervening parties, any extension of the demands on Cabrini, as proposed by the L. E. Waterman Co. in the instrument by which the cross action was instituted. In the second place, the Court recognized, by reason of evident legal effect in Italy, the irrelevancy in this case of certain judgments rendered by North American Courts, exhibited by Cabrini and the intervening parties in order to sustain the alleged unlawfulness of the use made by them of the name "Waterman" for designating the fountain pens in which they dealt. Finally, the Court decreed the production in court of partnership agreement of JUNE 12th, 1905, from which Cabrini and the intervening parties claim to derive the right to use the said designation, in order that this Court might be enabled, by its examination, to judge whether the defendant by virtue of the same, "WERE LAWFULLY, ACTUALLY AND EFFECTIVELY INVESTED WITH THE RIGHT TO USE THE NAME OF WATERMAN, OR WHETHER A FRAUD EXISTED WHICH WAS TO BE SUPPRESSED".

The defendants complied with the judicial provisions by producing said instrument, and thus the case could be taken up once more and prepared with all the above recorded conclusions for the final judgment of the Court at the hearing of June 22nd last.

## POINTS OF LAW.

The Court, in the previous decision, has already exhausted forth the motives (which, in fact, are incontrovertible, because they are settled by precise rules of our positive law) which prevent the recognition in Italy of the legal effect of the decision of July 14th, 1910, of the North American District Court for the Southern District of New York, and of that rendered on appeal on November 15th 1910, by the second Circuit Court of the United States, by which, according to the allegations of the defendants the lawful right of the Chapmans to call by the name of "Waterman" the fountain pens in with they dealt in the territory of that State, had been recognized. To the question again brought up by the defendants in this second stage of the action, the Court could only answer by referring to its previous judgment, calling attention, however, to the ambiguity in which Cabrini's counsel was involved by attributing to Ottolenghi the opinion according to which the legal effect of foreign judicial decisions may be recognized in Italy even though the act of confirmation prescribed by our judiciary be lacking. In the notable doctrinal controversy, whether the effect of a summary proceeding is that of admitting the foreign decision to become operative in our country, or whether its effect is that of inducing a judicial act which confirms and makes effective, by virtue of itself, and in this country, that which the foreign judge was able, by his decision, to confirm and make effective in his own country, Ottolenghi, in the work to which reference has been had, declares that he shares in the first mentioned opinion. It is this sense, and as restricted to the aforesaid controversy, that we must interpret the statement of the said author which Cabrini thought he might cite, torn out of its original connection, in support of a manifestly erroneous proposition, to wit that an *unacknowledged* foreign decision can have any judicial standing in the Italian Courts of Law.

The Court with a serene mind applies the opposite ruling to the present litigation, in which there is no danger that the formal strictness of principles will conflict with the equitable opportunity for arriving at a practical solution, because the North American decisions which were invoked do not even contain by virtue of their very nature of judicial provisions made as the result of summary information in "PRELIMINARY INJUNCTION PROCEEDINGS", a sure and DEFINITE acknowledgement of the right claimed by the defendants. Neither does the judgment of November 15th, 1910 rendered by the Circuit Court of Appeal of New York (to which defendant refers, as that which should be the decisive instrument in the case) resolve anything regarding the question submitted at this time for the decision of the Italian magistrates.

In fact, we read in the judgment in question: "THAT IT IS EVIDENT THAT THE COMPANY OF WHICH ARTHUR A. WATERMAN WAS A MEMBER HAD THE RIGHT TO USE THE NAME "A. A. WATERMAN e C." IN CONNECTION WITH ITS OWN AFFAIRS AND TO THUS MARK ITS OWN PENS", but in order to arrive at this certainly incontrovertible conclusion the same American magistrate takes care to add that his decision is wholly based, ACCORDING TO THE NATURE OF THE PAPERS, on the SUPPOSITION that the firm of A. A. WATERMAN AND COMPANY HAS THE RIGHT TO USE THIS FIRM NAME, UNDER THE TERMS OF THE CONTRACT WITH ARTURO A. WATERMAN.

Now this is precisely the subject (left undecided by the New York Court) of the investigation submitted for the consideration of this court, namely, to see whether it may be held, under the terms of the contract of June 12th, 1905, that Arthur Waterman has "*actually, seriously and effectively*" become a partner in the said business, so as to give him the right to assume his own name in the firm name.

It therefore now behooves this Court to answer this question on the ground of the examination of the exhited partnership agreement of June 12th, 1905, and therefore, for such purpose, to ascertain, as stated in the previous decision: whether the Messrs. Chapman are "LAWFULLY, SERIOUSLY AND EFFECTIVELY" invested by that agreement with the right to use the firm name "A. A. Waterman" to designate their firm, or whether the lending of that name falls within the meaning of an ARTFUL AND FRAUDULENT AGREEMENT.

Now it appears to the Court that it is unnecessary to have recourse to the statements made on September 14th 1910, by the said Arthur Waterman in his interrogatory *"de bene esse"* before the Circuit Court of the United States (Southern District of New York) but that the examination of the above mentioned agreement is sufficient to lead in itself necessarily to the conclusion that by such transparent agreement the Messrs' Chapman did not covenant anything else with Arthur Waterman but *the assignment of a Name.*

That is the only covenant which stands out very distinctly, among the rigorous precautionary clauses of said agreement and Constitutes evidently for the contracting parties the ONLY PURPOSE of the agreement. As a matter of fact, the imprudent and significant provisions relative to the allottment of the Company's capital (in the form of a loan at the rate of 6 per cent preferred right to the profits) the absolute exclusion of Waterman — a partner with unlimited liability — from any share in the Company's management and the peculiar position given him, viz: that of a CUSTOMER of the firm for the supplying of pens to be sold in the FAR WEST, imparts such an extraordinary meaning to this partnership agreement as to convey strong doubts as to the earnestness and sincerity of the parties who wished to carry it into effect. But the aforementioned conclusion is irresistibly deduced from the *ninth* clause of the agreement

which in the text of the agreement follows the seriously binding one relating to the IRREVOCABLE AND PERPETUAL transfer to the IRREVOCABLE AND name of "A. A. WATERMAN". Under the terms of the clause in question, Arthur Waterman is authorized to undertake the handling of fountain pens from July 1st, 1906, on, for his own account in the western territory of North America, with the provision, howver that "IN SUCH CASE HE SHALL CEASE TO RETAIN ANY INTEREST IN THE PARTNERSHIP CONSTITUTED BY THAT AGREEMENT" which is to belong exclusively to the Chapmans and their heirs; but it is added that if Waterman does not avail himself of this right within the aforesaid term". HE SHALL LIKEWISE CEASE TO FORM PART OF THE PARTNERSHIP IN THE SAME WAY AND IN EVERY RESPECT SIMILARLY AS IF HE HAD AVAILED HIMSELF OF THIS RIGHT""

In substance, at the same time at which Waterman entered into partnership with the Chapmans, his EXCLUSION from the said partnership in any event, AND WITHIN THE PEREMPTORY PERIOD OF ONE YEAR, was determined on by the agreement itself, so that in this way one of the essential elements of the agreement came to be rendered void A PRIORI, that is the element of EFFECTIO SOCIETATIS based on the equality of the contractual standing of the partners with regard to the common end, and thus deprived the agreement of the motive, legally sufficient to constitute its CAUSE OF BEING.

The advantages promised to Waterman by this agreement, the compensation granted him (really unexplainable in a country enjoying such great commercial freedom as North America) to work the West, constitutes for Waterman the consideration for the rendering of a service which is necessarily FOREIGN to the partnership agreement because the members of the partnership agreed, as far as he was concerned, upon its DISSOLU-

TION at the very instant when it was constituted. And inasmuch as the only service which Waterman assumes to render in the said agreement is that of ceding the use of his own paternal name, there is no doubt that this cession constitutes the *sole and real substance of the agreement* which the Chapmans were led to stipulate, because they knew that the use of that name might place them in a position of advantage in competing with the genuine L. E. Waterman firm, and that they hid this transfer of name under the mendacious appearance of a partnership agreement, knowing it to be unlawful. The historical precedents of such agreement to which reference has been had, afford nothing contrary to this conclusion.

It is asserted that the Chapmans came to make the agreement of June 12th, 1905, for the purpose of reorganizing their business subsequent to the withdrawal of the partner Frazer. This pretended purpose of the parties, however, cannot change the legal significance of the agreement, since the same results from its tenor as above pointed out. The said tenor, in the significant simplicity of the form adopted, does not afford grounds for holding that the subject matter of the agreement referred to an organization that already possessed legal existence, under the name of "A. A. Waterman" because there is not a single provision in the said agreement which regulates the fate of that property made up of industrial improvements,invention and progressive measures, such as would necessarily have accumulated under a name already commercially established. Whatever the status of the previous intercourse between the parties, may have been, it is an "EX NOVO" business, arising originally from this agreement, a business upon which Waterman, according to the agreement, does not confer any of these elements of his own technical or commercial personality which alone would have rendered legitimate the transfer to the firm of a name indissolubly connected with such personality. He intervenes merely for

the sake of contributing his name to the same, not because it has or contains any concrete commercial value in itself, but merely on account of the casual similiarity in names; and after this transfer he must immediately *quit* the firm, and go far away for vague and solitary ventures in the far West.

If therefore, the agreement of June 12th, 1905 contains an obligation based on a *false* and *illicit* motive, it is necessary to conclude that it cannot have any judicial effect, and that it cannot, therefore, confer on the defendants the right of using that name whether severally or jointly with other imaginary names, to differentiate the fountain pens of their own handling in competition with their similarly named rivals. The L. E. Waterman Co. is therefore rightfully entitled to proceed against the defendant for this illicit use of its own name, the suppression of which is independent of examinations into the technical industrial superiority of the respective fountain pens, because the name "Waterman" in common parlance has not yet become identified with the product constituting the specialty of the firm which first placed it on the market, but represents the reputation and specialty which it has been able to acquire in this business, and it therefore forms part of its commercial rights and as such deserved protection against the unlawful use of it made by others.

AND WHEREAS the motions principally made by the plaintiff must be admitted, representing as they do the natural remedy against the injury sustained,

AND WHEREAS also the two interrogatories for the direct testimony of witnesses must be admitted to clear up this confusion between the products of the contending parties, which constitutees an element of indemnifiable damage, as being a result of the unfair competition brought about by this unlawful use of name;

WHEREAS, consequently the motions made by the defendant Cabrini in the Cross-plea be rejected as a

whole on the strength of the well known principle: QUI JURE SUO UTITUR NEMINEM LAEDIT.

WHEREAS THERE IS OCCASION TO RESERVE THE DETERMINATION OF THE COSTS IN THE CASE TO THE FINAL DECISION.

And in view of Art. 409 of the Code of Civil Procedure

NOW, THEREFORE,

All motions to the contrary are rejected.

The Court declares as unlawful the use made by Guido Cabrini, both in his own name and as representative of Isaac and William Chapman, of the names "Waterman" "Waterman's". "A. A. Waterman", "Waterman Modern", "Waterman's Modern Fountain Pen" for the purpose of introducing and of selling fountain pens in Italy and for *advertising purposes.*

The use of said names constitutes an unlawful use of the firm name of the plaintiff company and an act of unfair competition.

And the Court orders the confiscation of all articles, products and *advertising matter* bearing any such names and marks. The L. E. Waterman Company, of New York, on the other hand, is allowed to prove by witnesses the circumstances detailed in the two interrogatories embodied in its conclusions and herein before literally transcribed, the recording judge being appointed to take the evidence.

Costs reserved.

Clause granted.

Thus decided by Part One of the Civil and Criminal Court of Milan on this first day of July,nineteen hundred and eleven (July 1st, 1911).

The original was signed by:

*Raimondi, Banzi, Casati,* est.

*Pezzati* (Vice-Clerk)

The present judgment was published by the undersigned at the hearing of this day, July 13th, 1911 in Part One.

The Clerk (Signed) *Pezzati*

Recorded in Milan, on July 19th, 1911, under No. 1015; Vol. 450, Judiciary Acts. Fee exacted: nine Lire and 15 cents.

The Collector (Signed) *Montiglio.*

We command all Bailiffs called upon and any others whose dutly it is, to execute these presents, and the public Prosecutor to give his assistance, and all commanders and officers of the public forces to cooperate with him, whenever legally called upon.

This present first copy drawn in executive form is in conformity with the original and is issued to the plaintiff.

Milan, August 2nd, 1911 — The Vice - Clerk

Inspected for certification to — (Signed) *Moreni*

the signature of Moroni, VC. — Seal of the Civil

Milan, August 2, 1911 — and Criminal Court

(Signed) *Granati,* — ..of Milan

President

Italian Int. Rev. Stamp One Lire cancelled by the stamp of Civil and Criminal Court.

(Signed) (illegible).

Certificate autheticating the signature of the President and of the seal of the Civil and Penal Tribunal of

Milan issued by the U. S. Consul at Milan on August 2, 1911.

(Seal of the U. S. Consulate)

American Consular Service Stamp.

Fee $2,00 cancelled August 2nd, 1911.
Seal of the U. S. Consulate at Milan.
Fee No. 224.
Lit. 10.40 — $2,00.

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STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.

Leon Dominian, being duly sworn, deposes and says that he is a resident of the City, County and State of New York and is well acquainted with both the Italian and English languages; that he has carefully compared the attached translation made by THE POLYGLOT COMPANY, viz: COURT DECISION in the L. E. Waterman Company, vs. Cabrini Guido matter, rendered under the date of July 1st, 1911, by the Royal Civil and Criminal Court of Milan; and that he finds the said translation to have been conscientiously and correctly made and that the same is an accurate translation of the said original instrument in every respect.

*Leon Dominian.*

Sworn to before me this 14th
day of November 1911.

*Manuel Muniz*

Notary Public (137)

New York Co., N. Y.

## Opinion.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY

against

MODERN PEN COMPANY.

SAMUEL S. WATSON, for the Complainant.
ALEXANDER S. BACON, for the Defendant.

HAND, District Judge:

The Circuit Court of Appeals has decided that there should be no absolute injunction against the name, "A. A. Waterman and Company," on the showing made. It is not therefore necessary to consider the question whether under any circumstances the court should altogether forbid a man from using his surname in a given business, and whether there may be cases where no accompanying phrase can prevent the result that the business of the first in the field will suffer by the competition of the second. Certainly the general rule is that such damage as so arises the victim must bear as an incident of competition. Further, the decision upon the preliminary injunction determined that upon the proof there presented the agreement of June twelfth, 1905, upon which the defendant depends was not a mere sham, but was a reason-

able part of the reorganization of the business of Frazer and Geyer Company, and it also determined that the old corporation of Frazer and Company had Waterman's right to use his name in the business. The testimony upon the final hearing is conceded to be substantially like that in the affidavits with two exceptions, first, the decree of the Italian court in the suit of this complainant against the Chapmans and Cabrini, and, second, the testimony of the assignment to Rhodes Lockwood of Waterman's business on February first, 1899.

The first question is therefore of the effect of the Italian decree. Regardless of what should be its scope, it does not make an estoppel at all, because it is not a final decree, and only such a decree effects an estoppel by our law, even in the case of a domestic judgment, *Brush Electric Co. vs. Western Electric Company,* 76 Fed. R. 761; *Ogden City vs. Weaver,* 108 Fed. R. 564; *Australian Knitting Co. vs. Gormly,* 138 Fed. R. 90; *Hills & Co. vs. Hoover,* 142 Fed. R. 904. It is true that the reason for this rule is not perfectly plain, but apparently it is that no judgment should be treated as an estoppel until the court that renders it has finally parted with control over the decision, per Lacombe, J., *Walter Baker & Co. vs. Sanders,* 80 Fed. R. 889-890. Thus if a final decree be entered *pendente lite,* it is enough, *Bradley Mfg. Co. vs. Eagle Mfg. Co.,* 57 Fed. R. 980, and possibly, if appeal be taken, and the interlocutory judgment be affirmed, *Bissell Carpet Sweeper Co. vs. Goshen Sweeper Co.,* 72 Fed. 545, if the rule is to be taken literally, it is enough that the Italian decree is confessedly interlocutory; if, on the other hand, the rule means that any decree is a good estoppel if the court that rendered it, has finally parted with the power to revise it, then proof is lacking here, for the complainant must show that it is such a

decree. The proof is silent upon that point. I do not forget that Accetta gave considerable testimony showing that so far as concerned the right to use the name, "Waterman," the decree was "final," but so it would be "final" *pro tanto* in this country. That only means, I take it, that the court has disposed of that part of the dispute, and is retaining the cause for the incidental assessment of damages. It does not mean, at least in the United States it would not mean, that the court did not still retain power to recall the decree, just as indeed it has power till the term be passed, even over a final decree. That the Italian court could not revise the decree is not even suggested in the testimony, the whole of which concerned quite a different matter, *i. e.*, whether the decree was a mere preliminary application analagous to a motion for a preliminary injunction, or whether it was the last action of the court necessary to a decision of the parties' rights. I have no doubt that the decree is the last judicial act necessary upon that branch of the case, but under our law that is not enough. I, therefore, lay aside the Italian judgment.

The remaining question is whether the new testimony of the assignment to Rhodes Lockwood affects the defendant's right to the use of the name "A. A. Waterman and Company." In 1897 Waterman left the complainant's employ and soon after formed a partnership with one Gibson. They did business under the name of "A. A. Waterman Pen Company," and "A. A. Waterman and Company." On September third, 1898, the complainant procured an injunction against the use of the first of these names but not the second. The firm at about this time entered into a somewhat vague relation with one Rhodes Lockwood, a pen dealer, and, eventually becoming financially embarrassed,

they assigned the whole business, good will and name included, to Lockwood, to whom they were heavily indebted. Gibson became Lockwood's employee, and Waterman continued in a small way in business for himself under the name of "A. A. Waterman, Maker," from February, 1899, to June, 1899, when he took into partnership one, Dewey, with whom he continued to do business as "A. A. Waterman and Co." for about eighteen months, until the partnership of Frazer and Geyer. As the assignment to Lockwood of February first, 1899, is lost, just what he got is uncertain; still he never attempted to use the name "A. A. Waterman and Company," except upon pens or parts of pens which were already partly made on the day of the assignment. In short he used his rights only to finish up the goods which he bought. Furthermore, he knew that Waterman was making pens under his own name, and actually supplied him with pens so marked. Thus, it appears that, whatever the exact words of the lost agreement, the parties treated it as in no sense giving Lockwood an exclusive right to use Waterman's name. I can only treat it as in fact giving such rights as the parties eventually accorded each other. Waterman continued the partnership with Dewey until January, 1901, and there is no suggestion in the record that during that time they did not do a real business under the name "A. A. Waterman & Company," making it prosper as much as they could. Now so far as Lockwood is concerned, Waterman, who certainly had the right to use his name, could have given another as good a right to use the name as he had himself, as an incident of the sale of the business. When a business is sold with its old name, the right to keep on using it is perfectly well established, though the significance of the continued use of the name must perhaps be stated in

rather general language, *Kidd vs. Johnson,* 100 U. S. 617, 620. It is basis enough for some recognition of the right to continue the use of the name that the public believes that, though a business changes hands, there may be a continuity of the old habits, a likelihood of persistence in fair dealing, or in the same good standard of wares, which gives assurance to them, and is of value to its possessor. Perhaps the value comes from a tacit recognition of the inertia of original honest practices; perhaps, like "good will" it arises from the mere suggestibility of new customers and the fixed habits of old, who will buy upon a well known name without more; but, whatever it be, the name does truthfully indicate some continuity and that is not a deceit, though the actual person is gone whose name appears, and whose personality originated the very qualities which make the succession of value.

This being the case a name is not something to be sold once, and the title then to be exhausted. All that can be sold is the right to designate the continued business as in fact the same, and I confess I do not see why in the absence of covenants to the contrary, which it is true are generally implied, A. may not engage in the same business in his own name as that which he has already sold to B. and which B. continues to conduct under A's. name. But if A. may start up a second business surely he may sell it, as he might sell his first, and with it the right to keep his name which indicates that it is the same business. The new business which Waterman had started had its own customers, its own reputation, its own methods of business, and the only name which that business had after June, 1899, was "A. A. Waterman & Company." *De facto,* it did have a name then; *de jure* no one could gainsay it. It is irrelevant that there

was another business still incompletely wound up even though Waterman had been one of its founders.

Moreover, if Waterman had sold out his business direct to the corporation of Frazer and Geyer Company they would have had the right to use the name upon the pens; indeed, upon purchasing the business they might have made that their own name, *Howe Scale Co. vs. Wyckoff, Seamans and Benedict,* 198 U. S. 118. It is of no consequence whether the assignee of an existing business is a corporation, a firm or an individual. Therefore, it is equally of no consequence whether the firm of Frazer, Geyer and Waterman was a mere subterfuge or not. At least, if it were not a real firm, that was because Waterman had sold out his business to the corporation and gone into its employ, and that he might do, and they might use his name. At most all that the law forbids is that a corporation at the outset choose a name which imitates another's name. Once a *bona fide* business be started, another may buy it up and develop it as they can, just as a special partner might give it capital to develop it.

In the case at bar, it does not seem to me to be open to any doubt that the whole purchase of Waterman's business and the preservation of the firm name had for its only motive the expectation that the Frazer and Geyer Company could by the resulting confusion pass off its goods under the cover of the complainant's reputation. My reasons for this are first Waterman's own very frank statement that throughout his connection with the enterprise the only serious inducement he could offer was the use of his name. Indeed, no other reason is suggested which could serve as any inducement to coalition with a man in Waterman's position at that time, one who had failed within

two years, and since his assignment to meet his debts, had been doing a small business in a town two hundred and fifty miles away, which came into no competition with the Frazer and Geyer Company and brought nothing to its business. Again, the obviously colorable character of all the contracts with Waterman showed that they valued him chiefly for the right they got to use his name. At no time had he any substantial powers as a partner, and after December twelfth, 1901, he had no rights to any profits or anything more than a salesman's salary or a salesman's commissions. The elaborate efforts to keep up the formal appearance of a real firm with actual business connections with the real enterprise show that the parties thought that they could not avow what was their real intention and the same efforts emphasize what that real intention was; especially is this true when one contrasts the formal relations with the fact that neither firm ever did anything actually but keep a spurious existence upon its books. Surely the chief inducement to combine with Waterman was to get the use of his name. However, I do not think that this is in the least degree relevant to the rights which the Frazer and Geyer Company got by the transfer, for the question is of the effect of the competition, not its purpose or motive. Whatever part motive may play and may be destined to play, in the law of torts, I know of no instance in which the legality of an act depends upon the actor's motives where those motives include his hope of personal gain. Motive has a just share in determining whether a man is in fact pursuing his genuine interests and whether he is therefore acting on his "rights," but when each party is obviously trying to increase his property, his estate, his "universitas," the mutual limitations of activity between them do not depend upon the

motive, so far as I know, but upon the means they use to effect their intentions and the results that ensue. Once it be conceded here that Waterman might in ignorance of the complainant's business have started a business under the name of "A. A. Waterman and Company" and after learning the facts have developed it as he could, I think his rights are not different because he knew from the outset that a part of his profits, if successful would be at the complainant's expense, and through confusion with the complainant's wares, as I have no doubt he did think. If his only motive were to damage the complainants the result might be quite different; so also if his only motive were to sell out as a blackmailer. Moreover if the defendant and its predecessors could have bought innocently, they could have bought with a deliberate purpose of profiting at the complainant's expense. Such consequences are involved in the right to use the name and sell the business with the name.

However, it does not follow that the right to use the name "A. A. Waterman and Company," is not subject to limitations. The record is full of evidence of the constant confusion which results from it, and since as usual the defendant extols its own wares and decries the complainant's there ought to be no ground for protest at any measures designed to avoid a confusion which must be disastrous to the defendant's reputation and its trade. It should welcome anything which, while it preserves its own chosen title in full, will serve to advise the public that they must not confound its superior goods with the complainant's. If it urges its superiority in good faith, the suffix which I shall suggest should be interpreted, at least by a buyer experienced in the business, as a voluntary disclaimer of an association disastrous to the manufacturer and deceitful to the public. There is

plenty of authority for an injunction in this form. *Singer Mfg. Co. vs. June Mfg. Co.,* 163 U. S. 169, 200, 204; *Herring, etc., Safe Co. vs. Hall's Safe Co.,* 208 U. S. 554; *American Waltham Watch Co. vs. U. S. Watch Co.,* 173 Mass. 85; *Walter Baker & Co. vs. Sanders,* 80 Fed. R. 889; *Dr. A. Reed Cushion Shoe Co., vs. Frew,* 162 Fed. R. 887.

I do not interpret the opinion of the Circuit Court of Appeals as meaning to control the final form of any decree which should pass, but only as deciding that there could be no decree absolutely prohibiting the use of the name "A. A. Waterman and Company." That Court certainly meant to leave the general question of what relief might be granted, to the testimony which might develop upon the trial of the cause. Now it is perfectly plain to any candid person that the ordinary buyer pays little attention to such prefixes as "L. E." and "A. A.," an inattention upon which it is quite clear to me the defendant's purchase of the name depended. Dealers will of course, know the difference very well, but they are privy to the fraud. It is the form in which the wares come to the final buyer that counts, and while the defendant is not responsible for the spontaneous representation of dealers, it must not so mark or dress its goods as to create or aid in, any misapprehension by the buyers, *Florence Mfg. Co. vs. J. C. Dowd & Co.,* 178 Fed. R. 73-75; *National Biscuit Company vs. Baker,* 95 Fed. R. 135.

The public means by the "Waterman" pen the complainant's pen; indeed, so the defendant concedes, being punctilious to avoid that name without its prefix. But the public by that very fact looks no further than the name. For myself, although I have used such pen for years, I am sure that I should not have had the least suspicion but that an "A. A. Waterman" pen was a "Water-

man" pen, and this record proves that many others have actually been so misled. Honest competition cannot exist until the defendant puts on its pens that they are not the original "Waterman" pens, which they are not. Therefore, a decree will pass forbidding the use of "Ideal," of "Waterman" and of "A. A. Waterman & Company" except in connection with the following phrase or its equivalent, all words to be written in letters of the same size, "Not connected with the original 'Waterman' pens," *Dr. A. Reed Cushion Shoe Co. vs. Frew, supra.* The complainant may have its costs except the expense of printing its brief; I know of no way of discouraging the printing of such unnecessarily long briefs as both sides present in this case except by refusing to allow them in the costs.

L. H.,
D. J.

Filed Jan. 25, 1912.

## Final Decree.

At a Stated Term, to wit: February Term, 1912, of the District Court of the United States of America, in and for the Southern District of New York, held at the Court Room thereof, in the City, County and State of New York, on the 9th day of February, 1912.

Present.—Hon. LEARNED HAND, District Judge.

L. E. WATERMAN COMPANY,
Plaintiff,

against

MODERN PEN COMPANY,
Defendant.

This cause came on to be further heard at the November, 1911, Term of the Circuit Court of the United States for the Southern District of New York and was argued by Samuel S. Watson, Esq., for the complainant, and Alexander S. Bacon, Esq., for the defendant, whereupon on consideration thereof, it is

ORDERED, ADJUDGED AND DECREED, that a writ of permanent injunction in due form go against the defendant, its agents, officers and servants, forbidding it or them, or any of them from using the words "Waterman," "Waterman's" or "Ideal" or any representation of a globe, upon

any part of any fountain pens or in connection with the sale of fountain pens; and under any of the circumstances hereinafter enumerated from using the words, "A. A. Waterman and Company" or "A. A. Waterman" without the words "not connected with the original 'Waterman' pens" in appropriate justaposition therewith written in letters at least as large, and equally conspicuous, as the said words, "A. A. Waterman & Co." or "A. A. Waterman." The following are the circumstances referred to: engraved or otherwise marked upon any parts of fountain pens sold by them or offered for sale; in any way marked upon all such boxes containing such pens; whenever in any other way by advertisement or otherwise they use the words to denote any fountain pens, made, or sold, or offered for sale by them, or that they are the makers or sellers of any fountain pens; but permitting them to use said words without such suffix under all other circumstances.

IT IS FURTHER ORDERED, ADJUDGED And DECREED, that the defendant may within four months next ensuing after the entry of this decree sell any pen points now made and on hand with the descriptive matter now thereon when inserted in fountain pen holders engraved or stamped with the suffix above mentioned.

IT IS FURTHER ORDERED, ADJUDGED And DECREED, that the plaintiff, L. E. Waterman Company, do have and recover of and from the said defendant, Modern Pen Company, its costs, charges and disbursements in this action except its expenses of printing its brief upon this final hearing, such costs, charges and disbursements to be taxed in the usual manner by the Clerk of this Court, and that the plaintiff, L. E. Water-

man Company, have execution against the said defendant, Modern Pen Company, therefor.

IT IS FURTHER ORDERED, ADJUDGED And Decreed, that this decree shall be stayed in respect of the words "A. A. Waterman & Co." and "A. A. Waterman," pending appeal from the date hereof upon condition that the defendant file a bond in the sum of Twelve thousand ($12,000) dollars conditioned upon the payment to the complainant by the defendant of any damages sustained by the complainant by virtue of any violation by the defendant, its agents, officers and servants, or any of them, of the terms of this decree were the same not stayed, and further provided that the defendant effect its appeal within one week of the date of the entry of this decree, and have the appeal and appeal papers filed and the case docketed for hearing in the United States Circuit Court of Appeals on or before March 1, 1912.

LEARNED HAND,
District Judge.

Filed Feb. 9, 1912.

## Petition of Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Complainant,

against

MODERN PEN COMPANY,
Respondent.

The defendant above named conceiving itself aggrieved by the final decree made in the above entitled action and entered in the office of the Clerk of this Court on the 9th day of February, 1912, wherein it is stated as follows:

"ORDERED, ADJUDGED AND DECREED, "that a writ of permanent injunction in due form "go against the defendant, its agents, officers and "servants, forbidding it or them, or any of them "from using the words 'Waterman,' 'Waterman's' "* * * upon any part of any fountain pens or "in connection with the sale of fountain pens; and "under any of the circumstances hereinafter enu- "merated from using the words, 'A. A. Waterman "and Company' or 'A. A. Waterman,' without the "words 'not connected with the original "Water- "man" pen' in appropriate justaposition there- "with written in letters as least as large, and "equally conspicuous, as the said words, 'A. A.

"Waterman & Co.' or 'A. A. Waterman.' "The "following are the circumstances referred to "engraved or otherwise marked upon any parts of "fountain pens sold by them or offered for sale; "in any way marked upon all such boxes contain- "ing such pens; whenever in any other way by ad- "vertisement or otherwise they use the words to "denote any fountain pens, made or sold, or of- "fered for sale by them, or that they are the makers "or sellers of any fountain pens; but permitting "them to use said words without such suffix under "all other circumstances. * * *

"IT IS FURTHER ORDERED, ADJUDGED "and DECREED, that the plaintiff, L. E. Water- "man Company, do have and recover of and from "the said defendant, Modern Pen Company, its "costs, charges and disbursements in this action "except its expense of printing its brief upon this "final hearing, such costs, charges and disburse- "ments to be taxed in the usual manner by the "Clerk of this Court, and that the plaintiff, L. E. "Waterman Company, have execution against the "said defendant, Modern Pen Company, therefor," does hereby appeal from so much of said decree of February 9th, 1912, as is above quoted, and from each and every part thereof; and the Respondent appeals also from one item in the Bill of Costs, as taxed, which allowed the sum of $250 paid as fees for premium for bond on preliminary injunction, to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors filed herein, and it prays that this appeal may be allowed and that a transcript of the papers, records and proceedings upon which said decree was made, duly authenticated, may be sent to the United States

Circuit Court of Appeals for the Second Circuit.
Dated, New York City, February 9th, 1912.

ALEXANDER S. BACON,
Solicitor for Defendant,
37 Liberty Street,
New York City.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed.

Done in open court this 10th day of February, 1912.

LEARNED HAND,
U. S. District Judge.

Service of a copy of the above petition for allowance of appeal is hereby admitted this 10th day of February, 1912.

SAMUEL S. WATSON,
Solicitor for Complainant.

(Endorsed:)—U. S. District Court, S. D. of N. Y.—Filed Feb. 14, 1912.

## Assignment of Errors.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Complainant,

vs.

MODERN PEN COMPANY,
Respondent.

The respondent, Modern Pen Company, files the following Assignment of Errors upon which it will rely upon its appeal from the final decree made by this Honorable Court on the 9th day of February, 1912, granting a permanent injunction in the above entitled cause:

The respondent assigns as error upon this appeal the following, viz:

The District Court erred in making the final decree granting a permanent injunction in this cause for the following reasons, to wit:

1. That the complainant is not entitled to an injunction against the use of the name "Waterman" or "Waterman's" but that the respondent is the duly authorized selling agent of the firm of A. A. Waterman & Co., and is entitled equally with the complainant to the use of the family name "Waterman" or "Waterman's" in connection with the manufacture and sale of fountain pens and parts

thereof, when used in connection with its trade name "A. A. Waterman & Co.," and "Arthur A. Waterman & Co." Respondent has never used or authorized the use of the name "Waterman" or "Waterman's" standing alone, in connection with the manufacture and sale of fountain pens and parts thereof, and cannot, therefore, be properly enjoined in relation thereto.

2. That the respondent, as sole selling agent of A. A. Waterman & Co., is entitled to the use of the name "A. A. Waterman" and "A. A. Waterman & Co." and "A .A. Waterman & Company" or "Arthur A. Waterman & Company" as an absolute right, and it is not properly required to place in appropriate justaposition therewith, written in letters at least as large and equally conspicuous as the words "A. A. Waterman & Co." or "A. A. Waterman" the words "not connected with the original 'Waterman' pen" as in said final decree set forth, but on the contrary, this defendant is entitled, as the selling agent of the firm of A. A. Waterman & Co., as a matter of absolute right, to the use of the trade name "A. A. Waterman & Co." and "A. A. Waterman" and "Arthur A. Waterman & Co." in connection with the manufacture and sale of fountain pens and the parts thereof.

3. That the proof shows affirmatively that the word "Waterman" is a family name and that for the ten years prior to the year 1905, the complainant did not have, nor was it entitled to, the right to the exclusive use of said family name as applied to the manufacture and sale of fountain pens and the parts thereof, but on the contrary, for ten years prior to the year 1905, one Arthur A. Waterman, in connection with various firms of A. A. Water-

man & Co., of which he was a partner, had the use and the right to use the name "Waterman" as a part of the firm name "A. A. Waterman & Co.," in connection with such manufacture and sale.

4. That the proof shows affirmatively and without contradiction that this defendant has never used or authorized the use of the word "Waterman" or "Waterman's" alone without the initials "A. A." or in any other way except in the trade name "A. A. Waterman & Co."

5. That as a matter of law and from the undisputed evidence, the complainant is not entitled to the exclusive use of the word "Waterman" except when standing alone, and the firm of A. A. Waterman & Co., of which this defendant is the sole selling agent, has the right to the exclusive use of the trade name "A. A. Waterman & Co." and "Arthur A. Waterman & Co." in connection with the manufacture and sale of fountain pens and the parts thereof, without being required to use in connection therewith the phrase "not connected with the original 'Waterman' pen" nor any qualifying phrase whatsoever.

6. That the proofs show affirmatively and without contradiction that, in the year 1905, one Arthur A. Waterman (who for about ten years prior thereto had been manufacturing and selling fountain pens and the parts thereof, and had stamped them with the trade name "A. A. Waterman" or "A. A. Waterman & Co."), by an instrument in writing for a valuable consideration, conveyed all his right, title and interest in and to said trade name together with the assets and good will of his said firm to the firm of A. A. Waterman & Co.; that said transfer was a valid and legal transfer to

said firm of the right to use said trade name; that said right now vests in said firm as now constituted and respondent is the sole selling agent thereof, and the Court was in error in holding that said transfer did not accompany said transfer of business, good will and assets; and the respondent had no right—not withstanding said assignment—to use said trade name of "A. A. Waterman & Co.," because said A. A. Waterman had ceased to be a member of said firm.

7. That the Court was in error in not holding that the present firm of A. A. Waterman & Co. (of which the defendant is the selling agent), is entitled to the exclusive use, in the Eastern part of the United States, of the trade name of "A. A. Waterman & Co.," in connection with the manufacture and sale of fountain pens and parts thereof.

8. The Court was in error in charging the respondent with costs, and that respondent's costs and disbursements should have been charged against the complainant.

9. The Court was in error in taxing the following items in the bill of costs: "Fees for bond on "preliminary injunction, $250.00" in that the said fee was a premium paid to a surety company on giving, on behalf of complainant, a bond to secure a temporary injunction, and is not properly taxable as a disbursement.

10. The Court was in error in granting said permanent injunction against the respondent.

In order that the foregoing assignments of error may be and appear of record, the respondent presents the same to the Court and prays that such

disposition be made thereof as in accordance with the law and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

Dated, New York City, February 9th, 1912.

ALEXANDER S. BACON,
Solicitor for Respondent,
37 Liberty Street,
New York City.

(Endorsed:)—U. S. District Court, Southern District of New York.—Filed February 14, 1912.

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## Bonds.

On February 14, 1912 a Bond for costs, in the sum of $12,000 was filed in the Clerk's office of the U. S. District Court, pending appeal to the U. S. Circuit Court of Appeals, by the Modern Pen Company.

On February 14, 1912, a Bond for costs, in the sum of $2,700 was also filed in the Clerk's office of the U. S. District Court by the Modern Pen Company.

## Citation.

By the Honorable LEARNED HAND, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit,

TO

L. E. WATERMAN COMPANY,

GREETING:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan in the City of New York, in the District and Circuit above named, on the ninth day of March, 1912, pursuant to a petition of appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein L. E. Waterman Company is complainant-appellee and Modern Pen Company is respondent-appellant, and you are to show cause, if any there be, why the decree in said petition of appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

GIVEN UNDER MY HAND at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 10th day of February, in the year of our Lord One Thousand Nine Hundred and Twelve, and of

the Independence of the United States the One Hundred and Thirty-sixth.

LEARNED HAND,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

Service of a copy of within citation admitted.
New York City, February 10th, 1912.

SAMUEL S. WATSON,
Complainant's Solicitor.

(Endorsed:)—U. S. District Court, S. D. of N. Y.—Filed Feb. 14, 1912.

## Clerk's Certificate.

United States of America, }
Southern District of New York, } ss.:

I, THOMAS ALEXANDER, Clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to 1883, consisting of three volumes, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled

L. E. WATERMAN COMPANY,
Complainant-Appellee,
against
MODERN PEN COMPANY,
Defendant-Appellant,

as the same remain of record and on file in said office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the (Seal) Second Circuit, this day of March, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States the one hundred and thirty-sixth.

THOS. ALEXANDER,
Clerk.

I hereby certify that the fee for certifying the transcript of record in the above-entitled cause amounted to $823.85.

THOS. ALEXANDER,
Clerk.

United States District Court, Southern District of New York.

L. E. WATERMAN COMPANY, Plaintiff,
against
MODERN PEN COMPANY, Defendant.

*Petition for Appeal.*

The complainant above named, considering itself aggrieved by the final decree made in the above-entitled action and entered in the office of the Clerk of this Court on the 9th day of February, 1912, wherein it is stated as follows:

"Ordered, Adjudged and decreed that a writ of permanent injunction in due form go against the defendant, its agents, officers and servants, forbidding it or them, or any of them * * * under any of the circumstances hereinafter enumerated from using the words, 'A. A. Waterman and Company', or 'A. A. Waterman', without the words 'not connected with the original "Waterman" pen' in appropriate juxtaposition therewith written in letters at least as large, and equally conspicuous, as the said words, 'A. A. Waterman & Co.' or 'A. A. Waterman.' The following are the circumstances referred to: engraved or otherwise marked upon any parts of fountain pens sold by them or offered for sale; in any way marked upon all such boxes containing such pens; whenever in any other way by advertisement or otherwise they use the words to denote any fountain pens made, or sold, or offered for sale by them, or that they are the makers or sellers of any fountain pens; but permitting them to use said words without such suffix under all other circumstances.

"It is further ordered, adjudged and decreed that the defendant may within four months next ensuing after the entry of this decree sell any pen points now made and on hand with the descriptive matter now thereon when inserted in fountain penholders engraved or stamped with the suffix above mentioned."

And the complainant does hereby appeal to the United States Circuit Court of Appeals, for the Second Circuit, from so much of said decree of February 9, 1912, which permits the use by the defendant in connection with the manufacture, advertising, offering for sale or selling of fountain pens or parts thereof of the words "A. A. Waterman & Co." "A. A. Waterman & Company" or "A. A. Waterman," whether the same be or be not accompanied by the words "not connected with original 'Waterman' pens" or any other qualifying phrase whatsoever; and the complainant also appeals to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors filed herein;

And the complainant prays that this appeal may be allowed upon the transcript of the papers, records and proceedings upon which said decree was made and which have been duly authenticated and

sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York City, New York, March 13th, 1912.

WATSON & RAYMOND,
*Solicitors for Complainant, No. 10 Wall Street, New York, N. Y.*

SAMUEL S. WATSON,
*Of Counsel.*

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed.

Done this 13 day of March, 1912.

GEO. C. HOLT,
*United States District Judge.*

Service of a copy of the above petition for allowance of appeal is hereby admitted this — day of March, 1912.

——— ———,
*Solicitor for Modern Pen Company, Defendant.*

United States District Court, Southern District of New York.

L. E. WATERMAN COMPANY, Plaintiff,
against
MODERN PEN COMPANY, Defendant.

*Assignment of Errors.*

The complainant, L. E. Waterman Company, files the following assignment of errors upon which it will rely upon its appeal from the final decree made by this Honorable Court on the 9th day of February, 1912.

The complainant assigns as error upon this appeal the following, viz.:

The District Court erred in making the final decree in this cause for the following reasons, to wit:

1. The Court erred in not holding that the alleged partnerships (*a*) between Arthur A. Waterman and Dewey, (*b*) between Frazer, Geyer and Waterman, (*c*) between the two Chapmans and Waterman, were not all mere shams or fraudulent devises used as cloaks and covers to secure the name "Waterman," "A. A. Waterman" and "A. A. Waterman & Co." in the fountain pen business for the purpose of filching the trade and business of the complainant's long prior established and existing business.

2. The Court erred in not passing a decree of injunction absolutely prohibiting the defendant from using in connection with the manufacture or sale of fountain pens or parts thereof (other than fountain pens of plaintiff's manufacture) the name "Waterman" or "Waterman's" or "A. A. Waterman" or "A. A. Waterman & Co." or "A. A. Waterman & Company" or "Arthur A. Waterman & Company."

3. The Court erred in holding that any of the alleged partnerships (of Dewey and Waterman, of Frazer, Geyer and Waterman, or of the Chapmans and Waterman) were bona fide firms, or at any time did a bona fide business.

4. The Court erred in not holding that the agreement of June 12, 1905, upon which the defendant depends for its right to use the names "A. A. Waterman," "A. A. Waterman & Co.," or "A. A. Waterman & Company" was a mere sham or fraudulent device.

5. The Court erred in not holding that neither the defendant nor the alleged partnership of A. A. Waterman & Co., of which the defendant is the selling agent, are the assignees of successors or in privity with any prior bona fide concern entitled to use in any manner whatsoever in the fountain pen business the names "Waterman," "A. A. Waterman," "A. A. Waterman & Co.," "A. A. Waterman & Company," "Arthur A. Waterman & Co.," or "Arthur A. Waterman & Company."

6. The Court erred in not decreeing that the Italian decree put in evidence by complainant was an estoppel and res adjudicata, finally determining between the parties to this action that the agreement of June 12, 1905, (*a*) was a mere sham or fraudulent device, (*b*) that the said agreement was a sale by Arthur A. Waterman of his name disconnected with any business, and (*c*) not a part of the reorganization of any prior or existing business.

7. The Court erred in not decreeing to the complainant the damages which it has suffered by reason of the defendant's infringement of complainant's trade-marks and for damages complainant has suffered by reason of the defendant's unfair trade practices.

8. The Court erred in not decreeing that a writ of permanent injunction issue against the defendant, its agents, officers and servants, forbidding it or them, or any of them, from

(*a*) Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any fountain pen of other manufacture than that of the plaintiff under the name of Waterman or Waterman's, or Waterman Pens, or Waterman's Pens, or Waterman Fountain Pens, or Waterman's Fountain Pens, or Ideal Pens, or any mark or name in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or deceive purchasers, or which would indicate that the fountain pens sold, represented or advertised are fountain pens of plaintiff's manufacture.

(*b*) Infringing the plaintiff's trade-mark, "Waterman's Ideal Fountain Pen, N. Y.," or infringing the plaintiff's trade-mark "Ideal," and from manufacturing or selling fountain pens (other than fountain pens of plaintiff's manufacture) having the said trade-marks or either of them, or any simulation or colorable imitation thereof, on such fountain pens, whether on the holder or on the gold pen, or on labels, boxes, signs, letter-heads, bill-heads, circulars, or advertisements accompanying or used in connection with the making or selling of such fountain pens, or in any manner whatsoever.

(*c*) Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any fountain pens of other manufacture than that of the plaintiff, engraved, imprinted or otherwise marked with any representation of a globe on such fountain pens, or upon boxes containing such pens, or on labels, signs, circulars or advertising accompanying or used in connection with the advertising or selling of such fountain pens.

(*d*) Using in connection with the manufacture or sale of fountain pens or parts thereof, other than fountain pens of plaintiff's manufacture, the name "Waterman" or "Waterman's" or "A. A. Waterman" or "A. A. Waterman & Co." or "A. A. Waterman & Company" or "Arthur A. Waterman & Company."

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the Court and prays that such disposition be made thereof as in accordance with the law and statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

Dated New York, N. Y., March 13th, 1912.

WATSON & RAYMOND,
*Solicitors for Complainant,*
10 *Wall Street, New York, N. Y.*

SAMUEL S. WATSON,
*Of Counsel.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 13, 1912.

*Bond.*

On March 13, 1912, a Bond for costs in the sum of $250 was approved by Judge Holt and filed in the Clerk's Office of the U. S. District Court by the Complainant-Appellant, L. E. Waterman Company.

*Citation.*

By the Honorable George C. Holt, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to Modern Pen Company, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the eighteenth day of March, 1912, pursuant to a petition of appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein L. E. Waterman Company is complainant-appellant and Modern Pen Company is respondent-appellee, and you are to show cause, if any there be, why the decree in said petition of appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 13 day of March, in the year of our Lord One thousand nine hundred and twelve, and of the Independence of the United States the One hundred and thirty-sixth.

GEO. C. HOLT,
*Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.*

Service of a copy of within citation admitted, New York City, —— —, 1912.

—— ——,
*Solicitor for Modern Pen Company.*

(Endorsed:) United States District Court, Southern District of New York. Filed —— —, 1912. —— ——, Clerk.

United States District Court, Southern District of New York.

L. E. WATERMAN COMPANY, Plaintiff,
against
MODERN PEN COMPANY, Defendant.

STATE OF NEW YORK,
*County of New York, City of New York, ss:*

Victor C. Cormier, being duly sworn, deposes and says, that he is an attorney and counsellor at law, associated with Watson & Raymond, solicitors for the plaintiff herein, and that he is a clerk in said office; that on the 13th day of March, 1912, he served a copy of the annexed plaintiff's petition on appeal, assignment of errors and notices and a copy of the annexed citation on Col. Alexander S. Bacon, solicitor for the defendant, by delivering to and leaving with him the same; that he knew the person so served to be Col. Alexander S. Bacon, the said solicitor for the defendant, Modern Pen Company.

VICTOR C. CORMIER.

Sworn to before me this 13th day of March, 1912.
AGNES M. VIKBERG,
*Notary Public, No. 27, Kings County.*

Certificate filed in New York County.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 13, 1912.

UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, Thomas Alexander, Clerk of the District Court of the United States of America, for the Southern District of New York, in the

Second Circuit, do hereby Certify that the foregoing pages, numbered from one to twelve, inclusive, contain a true and complete transcript of the Appeal papers filed in said Court, in the cause entitled L. E. Waterman Company, Complainant-Appellant, against Modern Pen Company, Defendant-Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 14th day of March, in the year of our Lord One Thousand Nine Hundred and Twelve, and of the Independence of the said United States the One Hundred and Thirty-sixth.

[SEAL.] THOMAS ALEXANDER, *Clerk*.

At a Stated Term, to wit: January Term, 1912, of the District Court of the United States of America, in and for the Southern District of New York, held at the Court Room thereof, in the City, County and State of New York, on the 3rd day of February, 1912.

Present:

Hon. Learned Hand, District Judge.

L. E. WATERMAN COMPANY, Plaintiff,
against
MODERN PEN COMPANY, Defendant.

This cause came on to be further heard at the November, 1911, term of the Circuit Court of the United States for the Southern District of New York and was argued by Samuel S. Watson, Esq., for the complainant and Alexander S. Bacon, Esq., for the defendant, whereupon on consideration thereof, it is

Ordered, adjudged and decreed that a writ of permanent injunction in due form go against the defendant, its agents, officers and servants, forbidding it or them, or any of them from using the words "Waterman," "Waterman's," or "Ideal," or any representation of a globe upon any part of any fountain pens or in connection with the sale of fountain pens; and under any circumstances hereinafter enumerated from using the words, "A. A. Waterman and Company," or "A. A. Waterman," without the words "not the original 'Waterman' pen" in appropriate juxtaposition therewith written in letters at least as large, and equally conspicuous, as the said words, "A. A. Waterman & Co." or "A. A. Waterman." The following are the circumstances referred to: engraved or otherwise marked upon any parts of fountain pens sold by them or offered for sale; in any way marked upon all such boxes containing such pens; whenever in any other way by advertisement or otherwise they use the words to denote any fountain pens made, or sold, or offered for sale by them, or that they are the makers or sellers of any fountain pens; but permitting them to use said words without such suffix under all other circumstances.

It is further ordered, adjudged and decreed that the defendant may within four months next ensuing after the entry of this decree sell any pen points now made and on hand with the descriptive matter now thereon when inserted in fountain pen holders engraved or stamped with the suffix above mentioned.

It is further ordered, adjudged and decreed that the plaintiff, L. E. Waterman Company, do have and recover of and from the said defendant, Modern Pen Company, its costs, charges and disbursements in this action except its expense of printing its brief upon this final hearing, such costs, charges and disbursements to be taxed in the usual manner by the Clerk of this Court, and that the plaintiff, L. E. Waterman Company, have execution against the said defendant, Modern Pen Company, therefor.

It is further ordered, adjudged and decreed that this decree shall be stayed in respect of the words "A. A. Waterman & Co." and "A. A. Waterman," pending appeal from the date hereof upon condition that the defendant file a bond in the sum of Twelve thousand ($12,000) Dollars conditioned upon the payment to the complainant by the defendant of any damages sustained by the complainant by virtue of any violation by the defendant, its agents, officers and servants, or any of them, of the terms of this decree were the same not stayed, and further provided that the defendant effect its appeal within one week of the date of the entry of this decree, and have the appeal and appeal papers filed and the case docketed for hearing in the United States Circuit Court of Appeals on or before March 1st, 1912.

LEARNED HAND,
*District Judge.*

Filed Feb. 5, 1912.

United States District Court, Southern District of New York.

L. E. WATERMAN COMPANY, Complainant,
vs.
MODERN PEN COMPANY, Respondent.

Please to take notice that upon the final decree entered herein on February 5, 1912, and upon the annexed affidavit of Alexander S. Bacon, verified February 8th, 1912, the undersigned will move this Court, at a term thereof, to be held before Judge Learned Hand, at the Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 9th day of February, 1912, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order resettling the said decree in the manner indicated in the copy proposed resettled decree hereto annexed and made part hereof, and for such other, further or different order or relief as may be just.

Dated, New York City, February 8th, 1912.

Yours, &c.,

ALEXANDER S. BACON,
*Attorney for Respondent,*
*37 Liberty Street, New York City.*

To Messrs. Watson & Raymond, Attorneys for Complainant.

United States District Court, Southern District of New York.

L. E. WATERMAN COMPANY, Complainant,
vs.
MODERN PEN COMPANY, Respondent.

COUNTY OF NEW YORK, *ss:*

Alexander S. Bacon, being duly sworn, says: That he is the attorney for the respondent above named; that the opinion of Judge Hand contains the following:

"Therefore, a decree will pass forbidding the use of 'Ideal,' of "'Waterman' and of 'A. A. Waterman & Company,' except in con-"nection with the following phrase or its equivalent, all words to "be written in letters of the same size, 'Not connected with the "'original "Waterman" pens.'"

The decree as entered gives the qualifying phrase as "Not the original 'Waterman' pen." Deponent understood that the phrase contained in the opinion was the one intended to be inserted in said decree.

ALEXANDER S. BACON.

Sworn to before me this 8th day of February, 1912.
V. M. TURNER,
*Notary Public, New York County,* # 36.

UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, Thomas Alexander, Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify, that the foregoing pages numbered one to —— are true copies of the Decree and motion papers thereon filed February 5, 1912, in the cause entitled L. E. Waterman Company vs. Modern Pen Company, as the same remain of record and on file in my office, and that the same were omitted from the transcript of record heretofore filed.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 18th day of March in the year of our Lord One Thousand Nine Hundred and Twelve, and of the Independence of the said United States the One Hundred and Thirty-sixth.

[SEAL.] THOMAS ALEXANDER, *Clerk.*

United States Circuit Court of Appeals for the Second Circuit, October Term, 1912.

No. 208.

L. E. WATERMAN COMPANY, Complainant-Appellant,
vs.
THE MODERN PEN COMPANY, Defendant-Appellant.

Appeals from the District Court of the United States for the Southern District of New York.

Argued April 11, 1912. Decided May 14, 1912.

Before Ward and Noyes, Circuit Judges, and Holt, District Judge.

Cross-appeals from a final decree of the District Court, Southern District of New York, in favor of the complainant in a suit charging infringement of trade marks and unfair competition.

This case has been before this court before upon an appeal from an order granting a preliminary injunction, the opinion of this court being reported in 183 Fed., 118.

PER CURIAM:

In our opinion the testimony upon the final hearing was not substantially different from that presented by the affidavits which were before us in the former record. The most important additions to that record consist of the Italian decree and the testimony concerning the Lockwood transactions, but we agree with the conclusions of the District Judge that those items do not materially change the situation.

The case before us, then, is practically the case which came up before and we are not convinced that our conclusions reached at that time were erroneous, or that the final relief granted should vary from the preliminary relief which we then regarded as proper except in one particular.

The record clearly demonstrates the confusion arising from the use by the defendant of the name "A. A. Waterman & Co." in the pen business in view of its similarity to the name of the complainant. The defendant has the right to use the name, but the complainant and the public have the right to insist that provision be made for minimizing the confusion arising from such use so far as practicable. We think that the suffix required in the decree appealed from tends to characterize the defendant's product as inferior to that of the complainant and is unduly prejudicial to it. The defendant should, however, distinguish its goods from those of the complainant and, in our opinion, should do so by employing after the name "A. A. Waterman & Co." or A. A. Waterman," the words "not connected with the L. E. Waterman Co." This notice should be suffi-

cient to put the public upon inquiry. We think it all that the facts of the case require, but it is the very least they do require.

The decree appealed from will be modified by striking out the words "not connected with the original 'Waterman' pens," and inserting in lieu thereof the words, "not connected with the L. E. Waterman Co."

The costs of this court and the costs of the lower court arising after our decision upon the former appeal will be divided equally between the parties. Costs of the lower court accruing before that time are awarded to the complainant.

With the modifications stated the decree of the District Court is affirmed.

S. S. Watson, for the Complainant.
A. S. Bacon, for the Defendant.

United States Court of Appeals, Second Circuit. Filed May 23, 1912. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

No. 208.

L. E. Waterman Company, Plaintiff-Appellant,
against
Modern Pen Company, Defendant-Appellant.

To the Honorable Henry G. Ward, Honorable Walter C. Noyes, Circuit Judges, and Honorable George C. Holt, District Judge:

The petition of the L. E. Waterman Company, the above named plaintiff-appellant, respectfully showeth:

That counsel for the petitioner has carefully examined the opinion of the Honorable Court in the above entitled action and thinks that he with propriety may ask this Court to consider whether this cause is not one in which it will be proper to grant a rehearing to the plaintiff-appellant, (1) as to the form of the suffix, and (2) as to the costs.

(1) As to the form of the suffix:

This Court decided that a suffix "is all that the facts of the case require." Assuming this to be final, your petitioner respectfully requests a reconsideration of the form of such suffix.

(*a*) This Court has directed that the defendant employ after the name "A. A. Waterman & Co." or "A. A. Waterman" the words "not connected with the L. E. Waterman Co." In so doing, this Court evidently overlooked the fact that the complainant's corporate name is not "L. E. Waterman Co.," but is "L. E. Waterman Company," as appears throughout the record. Complainant respectfully submits that if complainant's name is to be used as part of the suffix, it should be "L. E. Waterman Company" and not "L. E. Waterman Co." The defendant itself offered to use the full name "Arthur A.

Waterman & Co." instead of initials only, if the Court should so suggest (see Defendant's Brief, page 28). Defendant's full name, and not initials only, were required in Walter Baker & Co. vs. Baker, 87 Fed., 209, 212; Walter Baker & Co. vs. Baker, 130 Fed., 514; and World's Dispensary Medical Ass'n vs. Pierce, 203 N. Y., 419, and other cases, and in the case at bar the Court should, at least, require "Arthur A. Waterman & Co."

(*b*) The complainant or its predecessor has never marked on its pens "L. E. Waterman" or "L. E. Waterman Co." or its corporate name (see Exhibits 7, 8, 103 and 104), but has always marked its pens with the names "Waterman," "Waterman's," "Waterman Fountain Pen," "Waterman's Ideal" or "Waterman's Ideal Fountain Pen, N. Y." In other words the complainant has always marked its pens with its trade-names and trade-marks only, and not with its corporate name. The decision of this Court now authorizes the defendant to put complainant's name on fountain pens (something never done before), that is, put complainant's name on defendant's pens without sufficiently distinguishing words to differentiate defendant's pens from complainant's pens. Such marking will only increase the existing wide-spread confusion and substitution. Especially will such result be apparent when the Court takes into consideration that complainant's pens are almost universally spoken of and called for as "Waterman Pens" or as the "Waterman Pen" (see Complainant's Brief, pages 18-21), which is the characteristic feature of the names which complainant has always marked on its pens. In this connection the Court is respectfully asked to consider the situation, if the complainant should sell its business, good will, trademarks and trade-names to a concern whose name was entirely different from "L. E. Waterman Company," the total inappropriateness and insufficiency of the suffix ordered by this Court becomes strikingly apparent. It is the "Waterman Pen" which the public has learned to know and which it calls for, and it is the "Waterman Pen" which is the thing to be distinguished. As Judge Hand says:

"Honest competition cannot exist until the defendant puts on its pens that they are not the original 'Waterman' pens, which they are not" (Record, page 1870).

(*c*) Complainant respectfully submits that the suffix ordered by this Court is entirely insufficient to distinguish defendant's goods from complainant's, because its only distinguishing features are the initials "A. A." and "L. E.," which this record shows are no distinguishing features at all. This conclusion was the conclusion of the District Court, as is evidenced by its opinion, and such apparently is also the conclusion of this Court, which says: "This notice should be sufficient to put the public upon inquiry," which it is respectfully submitted is quite a different thing from the duty to "clearly distinguish." Judge Hand in his opinion (Record, page 1869) said:

"The ordinary buyer pays little attention to such prefixes as L. E. and A. A. * * * For myself, although I have used such pens for years, I am sure that I should not have had the least suspicion but that an 'A. A. Waterman' pen was a 'Waterman pen,' and this record proves that many others have been actually so misled."

"But it is said (by defendant), 'We have a right to the use of our whole name and we prefix our initials to "Rogers Bros." and to "Rogers" and we add to the "Rogers" the letters "Co."' In point of fact, these prefixes and suffixes are obscure, and, to the ordinary observer, enigmatical. They actually convey no meaning." International Silver Co. vs. Simeon L. Rogers, et al., 110 Fed., 955, 959.

"He (a purchaser) is not bound to study or reflect; he acts upon the moment. He is without the opportunity of comparison. It is only when the difference is so gross that no sensible man, acting on the instant, would be deceived, that it can be said that the purchaser ought not to be protected from imposition. * * * However that may be, the imitation need only to be slight if it attaches to what is most salient, for the usual inattention of a purchaser renders a good will precarious if exposed to imposition." Pillsbury Co. vs. Pillsbury-Washburn Co., 64 Fed. (C. C. A.), 841, 847.

This Court also finds that "the record clearly demonstrates the confusion arising from the use by the defendant of the name 'A. A. Waterman & Co.' in the pen business," and is evidently desirous of removing such confusion as far as is equitably possible. Complainant respectfully submits, however, that the suffix authorized by this Court contains absolutely nothing which will distinguish, or in any manner indicate, to the purchasing public that defendant's pens are not the pens which for nearly thirty years past they have commonly called for and purchased as "the Waterman Pen."

(*d*) This Court, for the first time, has established a new standard, or formulated a new principle of law, applicable to unfair competition cases, if it permits its decision to stand unmodified. This Court's decision says: "This notice should be sufficient to put the public upon inquiry." Up to this time, the principle of law governing such cases has been that the newer concern "must clearly distinguish," "carefully distinguish," "clearly and unmistakably specifying," "as to guard against any possibility of deceiving the public as to the source of manufacture."

"Therefore such names and phrases could be used only if so explained that they would not deceive." Herring-Hall-Marvin Safe Company vs. Hall's Safe Company, 208 U. S., 554, 559.

"* * * he will be required to use his name of Baker in such a manner as will make it plainly distinguishable from the name of the complainant." Walter Baker & Co. vs. Baker, 77 Fed., 181.

"When he presents his article as W. P. Baker's chocolate, he not only improperly works mischief to the pre-existing manufacturer, but he wrongs the public, because he does not accompany his name 'with such indications that the thing manufactured is the work of the one making it as will unmistakably inform the public of that fact.' Singer Mfg. Co. vs. June Mfg. Co., 163 U. S., 169." Walter Baker & Co. vs. Baker, 87 Fed., 209.

Defendant required "to clearly distinguish the business carried on * * * from the business carried on * * * by the plaintiff." Cash vs. Cash, 19 R. P. C., 181.

"He should not be allowed to designate his article by his own name in such a way as to cause it to be mistaken for the manufacture of

goods of another already on the market under the same or similar name." Water Baker vs. Sanders, 80 Fed. (C. C. A.), 889.

"The opinion of the Supreme Court of the United States, in the Singer case, * * * require the name to be used in connection with such proper statements in advertisements, etc., as to guard against any possibility of deceiving the public as to the source of manufacture." * * *

"The rule is, that what the Court will regard as sufficient notice of the source of manufacture, must be given by such user of another's trade-name, and that such name may not be used without clearly and unmistakably specifying, in connection therewith, that such machines are the product of the defendant, or other manufacturer, and therefore not the product of the original maker and vendor thereof." Ludlow Valve Mfg. Co. vs. Pittsburg Mfg. Co., 166 Fed. (C. C. A.), 26, 29, 31.

"The public do not go into the minuter refinements of the title or the label. * * * so long as the title contains the words which in trade and among customers have come to be the every-day designation of complainant's goods, the chocolate so labeled will naturally be assumed to be complainant's, unless special care be taken to indicate that it is not." Walter Baker & Co. vs. Sanders, 80 Fed. (C. C. A.), 889, at page 894.

"The practical difficulty in this class of cases is to compel the newcomer into the chocolate or cocoa market to swing clear of the complainant, and to use his name in such a way as unmistakably and intentionally to show that he is not the well-known manufacturer; in other words, to carry to a successful result 'a bona fide effort to accentuate the differences' with respect to the origin of the two products, and thus to acquire a reputation for his own genuine work." Walter Baker & Co. vs. Baker, 87 Fed., 209, at page 212.

Royal Baking Powder Company vs. Royal, 122 Fed. (C. C. A.), 337.

Pillsbury Co. vs. Pillsbury-Washburn Co., 64 Fed. (C. C. A.), 841.

Valentine's Meat Juice Co. vs. Valentine, 17 Real Prop. Cases, 673.

(*e*) Complainant and its predecessor, Lewis E. Waterman, had been in business fourteen or fifteen years, and had a widely known and well established reputation, before the name "A. A. Waterman" or "A. A. Waterman & Co." was ever used by anybody in any fountain pen business; and complainant and its predecessor had been in business twenty-three years before the defendant, or the "A. A. Waterman & Co." under which defendant claims, was organized or began business.

Therefore, complainant respectfully urges that the defendant should be required to use the word "original" as part of the suffix, or the present confusion will be in no wise abated. The suffix as now directed by this Court is the form commonly employed by an original manufacturer seeking to warn the trade of other goods which may be "passed off" as his. In this connection the Court's attention is re-

spectfully requested to the suffixes required in Walter Baker & Co. vs. Sanders, 80 Fed. Rep. (C. C. A.), 889, and in International Silver Co. vs. Rogers, 72 N. J. Eq., 933, in which latter decision Mr. Justice Pitney (now of the Supreme Court) joined. We quote from the latter opinion, pages 937, 938:

"It is the word 'Rogers' that is all controlling, and it is that which should be differentiated in order to effectually distinguish the goods.

"In Baker vs. Sanders, 80 Fed. Rep., 889, 895, the defendant (in lieu of more extended changes) was required to affix the statement that 'W. H. Baker is distinct from and has no connection with the old chocolate manufactory of Walter Baker & Company.' * * *

"The words, 'Not connected with any other Rogers,' even if they reached the retail purchaser, would not suffice for that purpose. Those words merely tend to add to the confusion. They might well be, and usually would be, employed by an original manufacturer seeking to warn the trade when he finds on the market other goods which may be passed off as his. They would be the appropriate announcement of an original maker that he has no connection with other wares of similar appearance or wares put out under a similar name. These words also afford an unscrupulous retail dealer opportunity to pass off the product as the original 'Rogers' goods. In employing such words, so misleading and ambiguous, the defendant is clearly guilty of bad faith.

"The defendant having failed in the performance of his duty so to distinguish his silverware that it could not be mistaken for that of the complainant, we think the complainant is entitled to have an injunction restraining the defendant from manufacturing and selling his goods unless he stamps upon them the words, 'Not the original Rogers,' or 'Not connected with the original Rogers.'"

"It should forbid the use of the name Hall, * * * unless accompanied by information that the defendant is not the original Hall's Safe and Lock Company or its successor, * * *." Herring-Hall-Marvin Safe Company vs. Hall's Safe Company, 208 U. S., 554, at page 560.

"The statement that the defendant makes them does not save the fraud. That is not what the public would notice or is intended to notice, and, if it did, its natural interpretation would be that the defendant had bought the original business out and was carrying it on." Jacobs vs. Beecham, 221 U. S., 263, at page 272.

"This dictionary is not published by the original publishers of Webster's Dictionary, or by their successors." Merriam Co. vs. Ogilvie, 170 Fed., 168 (C. C. A., 1st Circuit); Merriam Co. vs. Saalfield, 190 Fed., 934 (C. C. A., 6th Circuit).

"The following is a specific example of such a notice as we deem proper:

'Improved Cushion sole Shoe, Dr. A. Reed, Patentee, 1900, 1901. But this is not the original Dr. A. Reed Cushion Shoe previously patented.'" Dr. A. Reed Cushion Shoe Co. vs. Frew, 162 Fed., 887, at page 891 (2nd Circuit).

"without displaying in connection therewith, plainly and in a prominent manner, a statement that the defendants are in no way con-

nected with Chickering & Sons, of Boston, Mass., and that the defendants' pianos are not the 'original Chickering' pianos * * *

"From doing any and all acts * * * to induce the public to believe that the pianos manufactured or sold by the defendants, or any of them, are genuine Chickering pianos, or the product of the original Chickering Piano Manufacturing Concern." Chickering vs. Chickering & Sons, 120 Fed. Rep. (C. C. A.) 69, 72.

In all of these cases, the Court will note that the word original figures prominently, and we have been unable to find any case where the Court has ordered a suffix which did not contain the word original except Baker vs. Sanders, supra, where the Court directed the use of the expression "old chocolate manufactory." Without the word original as a part of the suffix, the door is open wide for confusion, fraud and deception such as this record shows has heretofore existed.

(*f*) Defendant claims its pens are far superior to the "original 'Waterman' pen." As Judge Hand says, "if it (defendant) urges its superiority in good faith," "it should welcome anything which, while it preserves its own chosen title in full, will serve to advise the public that they must not confound its superior goods with the complainant's." (Record, page 1868.) The suffix directed by the District Court can with equal, if not more, force be used as prejudicial to the complainant. The defendant may, and doubtless will, say that its pens are, "not the original 'Waterman' pen," but a better pen; or, that its pens are not the old, out-of-date, original 'Waterman' pen, but are an up-to-date, modern, improved pen. It is impossible to conceive how the suffix "not connected with, or successors to, the original 'Waterman' pen" can be prejudicial to the defendant, if it urges in good faith the superiority of its pens and honestly desires to market them on their own merits.

(*g*) The suffix should also be modified by inserting the words "or its successors." Such was the stated requirement in the Hall case, supra, and in the Webster Dictionary cases, supra; in the Beecham case, supra, the name was absolutely prohibited, but the Court's opinion on this point was plainly indicated. (See exce-pts from all above cases, supra.) The suffix, to distinguish, should, at least, be "not connected with, or successors to, the original 'Waterman' pen."

(2) As to costs: The Court has evidently overlooked certain facts which have a material bearing upon the adjudication of costs.

The defendant made the offers (mentioned at page 7 of defendant's brief, and set out at pages 601 and 602 of the record) to make the preliminary injunction order permanent, which were urged as the reason why the costs should be taxed against complainant. The Court evidently overlooked the concurrent counteroffer of the complainant to limit the proofs for final hearing to the subject-matter covered by paragraph marked "3" of the preliminary injunction order provided the defendant would consent that at the final hearing an injunction order should be made which would include the prohibitions contained in paragraphs marked "1" and "2" of the temporary injunction order. This offer was made concurrently with defendant's offer of December 12, 1910, and complainant on May 19,

1911, immediately after defendant's second offer, dated May 17, 1911 (Record, page 1602), made the offer set out at Record, page 1122. Neither of the complainant's offers *were* accepted and therefore it became necessary for the complainant to complete its proofs covering the subject-matter contained in paragraphs marked "1" and "2," as well as in paragraph "3" of the preliminary injunction order.

On final hearing, the District Court and this Court granted complainant a permanent injunction covering, in substance, the subject-matter of paragraphs marked "1" and "2" of the preliminary injunction order, and also some relief respecting the subject-matter of paragraph marked "3" of the preliminary injunction order, this Court requiring the defendant to employ with the name "A. A. Waterman & Co." or "A. A. Waterman" the words "not connected with L. E. Waterman Co." In view of this situation, it is respectfully submitted that it is inequitable that complainant be ordered to pay one-half of all the costs arising after the decision of this Court upon the former appeal, and in making such decision this Court must have overlooked complainant's counter and concurrent offers stated above and set out on page 1122 of the Record.

It is therefore respectfully submitted that all of the costs of the lower Court, at least, should be taxed against the defendant, as decreed by the District Court.

If this petition is granted, the costs in this Court should await the result of the reconsideration.

Wherefore, upon the foregoing grounds, your petitioner respectfully prays this Honorable Court to grant to it a rehearing of said cause.

L. E. WATERMAN COMPANY,
By SAMUEL S. WATSON,
*Attorney for L. E. Waterman Company, Petitioner.*

SAMUEL S. WATSON,
*Of Counsel.*

I, Samuel S. Watson, of counsel for the appellant-petitioner herein, do hereby certify that in my judgment the foregoing petition for a rehearing is well founded and that the same is not interposed for delay.

SAMUEL S. WATSON.

United States Circuit Court of Appeals for the Second Circuit, October Term, 1911.

No. 208.

Petition Filed May 23, 1912. Decided May 28, 1912.

THE L. E. WATERMAN COMPANY, Complainant-Appellant,
vs.
THE MODERN PEN COMPANY, Defendant-Appellant.

On Petition for Rehearing.

Appeals from the District Court of the United States for the Southern District of New York.

Before Ward and Noyes, Circuit Judges, and Holt, District Judge.

Per CURIAM:

In addition to the modifications of the decree appealed from stated in the opinion, the order for the mandate may require the defendant to use the name "Arthur A. Waterman & Co." instead of "A. A. Waterman & Co."

If, as stated in its petition, complainant feels that the required suffix "will only increase the existing wide-spread confusion and substitution," the order for the mandate will, at its option, contain no provision for a suffix.

The petition for a rehearing is denied.

United States Circuit Court of Appeals, Second Circuit.

# 208.

L. E. WATERMAN COMPANY, Plaintiff,
vs.
MODERN PEN COMPANY, Defendant.

To the Honorable Henry G. Ward, Honorable Walter C. Noyes, Circuit Judges, and Honorable George C. Holt, District Judge:

The petition of the Modern Pen Company, the above named defendant-appellant, respectfully shows:

That counsel for the petitioner has examined the per curiam opinion of this court, on petition for rehearing, which petition was presented ex parte by the plaintiff herein, and has learned that the plaintiff has exercised the option indicated in said opinion, and has elected that the defendant should be required to use the name "Arthur A. Waterman & Co." instead of "A. A. Waterman & Co." and has also elected that the suffix should be retained.

The defendant serves a copy of this petition on the plaintiff's

attorneys, and asks that the mandate of the Circuit Court of Appeals to the Court below should contain a direction in relation to the disposal of the defendant's goods now on hand, as indicated in the annexed affidavit of Mr. Hobart W. Geyer, and for the reasons indicated in said affidavit.

The most conspicuous part of the fountain pen is the rubber holder and the marking thereon is, generally speaking, the only marking that would be noticed by a retail purchaser. The marking on the holder can be obliterated and changed. It is a matter of some trouble and expense, but it can be done; but the marks on the gold pen point cannot be changed. Such marks are made when the pen is flat, and it is thereafter fashioned into its final shape. To change that marking is a mechanical impossibility, and if an injunction prevents the use of such pen points, they will have to be destroyed.

The defendant has about 2,000 such pen points on hand, and has many thousands in the hands of dealers, defendant's customers, all of which were marked as prescribed either by this Circuit Court of Appeals or by the District Court. That is to say, each sale when made was strictly in accordance with the law as then laid down.

The changes required by the different court decisions are indicated in the annexed affidavit.

The plaintiff has threatened to sue all dealers having on hand any of these pen points or holders, as soon as the form of the decree on appeal shall be determined, as indicated by the letter set forth in the annexed affidavit.

There are certain pens with much gold and silver ornamental work on the holder that have been marked "A. A. Waterman & Co." with a suffix. This marking is engraved and cannot be changed.

As soon as the opinion of this Court was handed down, the defendant procured new stamps and has marked many thousands of pen holders with the new stamps, i. e. "A. A. Waterman & Co., not " connected with the L. E. Waterman Co." This was done in haste, anticipating that the entry of the decree would summarily prevent the shipping of any goods not so marked, and hundreds of pens are shipped every day. The change from "A. A. Waterman & Co." to "Arthur A. Waterman & Co." is on the election of the plaintiff, and the plaintiff, by electing to make this change, will have cost the defendant very large additional expense. This expense comes not from any act either of the defendant or of the court, but from the election of the plaintiff itself.

The defendant has also ordered large quantities of stationery, advertising cards, and the like, marked "A. A. Waterman & Co. not connected with the original 'Waterman' pen" or "A. A. Waterman & Co. not connected with the L. E. Waterman Co." This printing has been ordered in obedience either to the decree of the court or the suggestion contained in an opinion, and the defendant is not responsible for the changed suffixes. It is also requested that the defendant be permitted to use up the large quantities of stationery and printing matter now marked "A. A. Waterman & Co. with one of the suffixes heretofore decreed or suggested by the court.

The many changes that have been prescribed have been expensive to the defendant, and bid fair to be extremely troublesome on account of the disagreeable conduct of the plaintiff which is threatened by reason of the notice and letters.

The defendant feels itself aggrieved and asks that in the decree, as modified, it may be provided that this defendant and all its customers, may be permitted to dispose of their goods now on hand, either pen points or complete fountain pens, on condition that each complete fountain pen shall bear on its holder, either "A. A. Waterman & Co. not connected with the original Waterman pen," "A. A. Waterman & Co. not connected with the L. E. Waterman Co." or "Arthur A. Waterman & Co., not connected with the L. E. Waterman Co."

Wherefore upon the foregoing grounds and the grounds indicated in the annexed affidavit, your petitioner respectfully prays this Honorable Court to grant the modifications indicated in this petition, and its accompanying affidavit.

MODERN PEN COMPANY,
By ALEXANDER S. BACON,
*Petitioner.*

ALEXANDER S. BACON,
*Of Counsel.*

I, Alexander S. Bacon, of counsel for the defendant-appellant-petitioner herein, do hereby certify that in my judgment the foregoing petition is well founded, and that the same is not interposed for delay.

ALEXANDER S. BACON.

United States Circuit Court of Appeals, Second Circuit.

208.

L. E. WATERMAN COMPANY, Plaintiff,
vs.
MODERN PEN COMPANY, Defendant.

COUNTY OF NEW YORK, *ss:*

Hobart W. Geyer, being duly sworn, says that he is the manager of the Modern Pen Company, the defendant above named.

Immediately upon the receipt of Judge Hand's opinion, before his decree was entered, deponent caused to be made stamps and wheels (a wheel is a circular stamp) and marked all holders on hand "A. A. Waterman & Co., not connected with the original Waterman pens."

When the decree was signed, the suffix was made to read "pen" instead of "pens," and deponent immediately had the stamps and wheels changed so as to read "A. A. Waterman & Co., not connected with the original Waterman pen."

At the same time, all new gold pen points were stamped merely "A. A. W. & Co."

The pen points are stamped when they are flat, that is, before they receive their final form, and the stamp on the gold pen point cannot be changed after the pen is rounded up into shape. It is mechanically impossible.

The stay contained in Judge Hand's decree provided for the disposal of pen points then on hand, provided the pen holders contained the name and suffix.

Immediately upon the receipt of the opinion of the United States Circuit Court of Appeals, wherein they indicated that the suffix would be changed to "not connected with the L. E. Waterman Co.," deponent caused new stamps and wheels to be made, and immediately proceeded to restamp the penholders on hand, so as to read "A. A. Waterman & Co., not connected with the L. E. Waterman Co."

Deponent has just learned that on an ex parte application of the plaintiff, the decision of the Circuit Court of Appeals has been modified by changing "A. A. Waterman & Co." to "Arthur A. Waterman & Co." This will require another change in stamps and wheels. Stationery has also already been changed, and large quantities are on hand.

The result of these various changes is that the defendant has now on hand, in stock, about 2,000 gold pen points, and many thousands in the hands of its customers, marked "A. A. Waterman & Co." without a suffix. It also has on hand about 20,000 rubber holders stamped "A. A. Waterman & Co." some with the suffix "not connected with the original Waterman pen" and some with the suffix "not connected with the L. E. Waterman Co."

These changes have been expensive, and unless the defendant is permitted to dispose of the pen points already made, marked "A. A. Waterman & Co." they will have to be destroyed.

The most difficult problem does not relate, however, to the stock on hand. The defendant has as customers about seven or eight thousand dealers who have stocks of pens variously marked. Thousands of pens are sent out every week. The dealers received these stocks of pens when it was perfectly lawful to manufacture and sell them. That is, under the express mandate of the decree of September 23, 1898, reaffirmed by this Circuit Court of Appeals, when it modified and substantially reversed the preliminary injunction of Judge Hough, so that every pen and part of pen that is now in the hands of dealers was received by them when it was strictly legal so to do.

Immediately after Judge Hand's decision, the plaintiff sent out broadcast throughout the country and Canada, printed copies of the decree and writ of injunction, together with the following notice:

"To all whom it may concern:

"Notice is hereby given that infringement of our trade-marks and
" trade-names, and infringement of our rights as shown by the in-
" junction decree and permanent writ of injunction of the United

" States District Court, copy of which is hereby served upon you, " will be vigorously prosecuted.

"L. E. WATERMAN CO.,
"173 *Broadway, New York, N. Y.*

"Watson & Raymond, Attorneys, 10 Wall street, New York, N. Y."

The plaintiff has sent out with said printed writ, decree and notice, originals of which are herewith submitted, letters similar to the following:

"NEW YORK, N. Y., *Feb.* 20, 1912.

"Mr. L. R. Rubenstein, Birmingham, Ala.

"DEAR SIR: We are enclosing herewith copy of a Writ of In- " junction and a Decree of the United States District Court. The " Defendant has taken an appeal from a portion of this Decree, but " we hereby notify you that we shall hold all persons violating or " infringing our rights as adjudicated by the enclosed Decree, in the " event that the Decree is affirmed upon appeal, *from* all profits and " damages which we may suffer on account of the violation or in- " fringement of our rights.

"We are advised that you have been violating or infringing our " rights as adjudicated to us by said Decree, and we have instructed " our attorneys to prosecute all infringements and violations of our " rights immediately upon the determination of the same by the " United States Circuit Court of Appeals.

We ask that you acknowledge the receipt of the above and within notice.

" Yours very truly,

"L. E. WATERMAN CO.
"F. P. SEYMOUR.

From this letter and notice it is evident that the plaintiff intends to bring legal proceedings against customers of the defendant who have stocks of pens on hand which they bought when it was perfectly legal to buy and sell the same under the express mandate of this Circuit Court of Appeals. When Judge Hand granted four months in which to dispose of pen points contained in holders stamped with the suffix, he evidently intended that it should be lawful for the dealers to retail the stock that the defendant was permitted to sell them. The above threatening letter and notice are evidently intended to interfere with the defendant's business that was impliedly at least sanctioned by Judge Hand.

On the receipt of this threatening notice, a very large number of the defendant's customers have sent back their stock to the defendant and have had the holders restamped with the suffix called for by Judge Hand's decree.

As soon as the decree of this court is entered, a large proportion of the defendant's customers will probably send in their stock to be stamped again, but the restamping of the gold pen points is mechanically impossible.

And under the terms of the injunction, the pen points (which the retail purchasers rarely ever notice) would have to be stamped with the new suffix which is mechanically impossible.

Therefore, inasmuch as the court has modified its opinion, requiring "Arthur A. Waterman" instead of "A. A. Waterman" without notice to the defendant, defendant respectfully requests that the decree be further modified by permitting the sale of all gold pen points now on hand, or in the hands of customers of the defendant, if contained in holders marked with either the suffix directed by Judge Hand or by this Circuit Court of Appeals in its last decision.

HOBART W. GEYER.

Sworn to before me this 4th day of June, 1912.

V. M. TURNER,
*Notary Public, New York County,* #57.

(Endorsed:) 4452. United States Circuit Court of Appeals, Second Circuit. L. E. Waterman Company, Plaintiff, vs. Modern Pen Company, Defendant. Copy. Petition for modification of decree. Alexander S. Bacon, Attorney for defendant, 37 Liberty Street, Borough of Manhattan, New York City. To —— ——, Attorney for —. Due, timely and proper service of a copy of the within is hereby admitted. Dated ——, —. —— ——, Attorney for —. United States Circuit Court of Appeals, Second Circuit. Filed Jun-7, 1912. William Parkin, clerk.

United States Circuit Court of Appeals for the Second Circuit, October Term, 1911.

No. 208.

Motion Filed June 7, 1912; Decided June 7, 1912.

THE L. E. WATERMAN COMPANY, Complainant-Appellant,

vs.

THE MODERN PEN COMPANY, Defendant-Appellant.

Appeals from the District Court of the United States for the Southern District of New York.

Before Ward and Noyes, Circuit Judges, and Holt, District Judge.

Per CURIAM:

It is equitable that the penholders which the defendant has in good faith marked in accordance with Judge Hand's decree with the suffix "not connected with the original Waterman pen," or in accordance with the opinion of this Court before the use of the name "Arthur" was required, should be permitted to be sold and the order for the mandate may so provide.

The application for further changes in the order is denied.

United States Circuit Court of Appeals, Second Circuit.

L. E. WATERMAN COMPANY, Complainant,
against
MODERN PEN COMPANY, Defendant.

Pursuant to the opinion upon petition for rehearing, the L. E. Waterman Company hereby elects that the order for the mandate require the defendant to use the name "Arthur A. Waterman & Co." instead of "A. A. Waterman & Co." and the L. E. Waterman Company also elects that the order for the mandate require the defendant to use the suffix as determined by the original opinion upon the appeal from the final decree of the District Court.

Dated June 3, 1912.

L. E. WATERMAN COMPANY,
By SAMUEL S. WATSON,
*Its Attorney.*

SAMUEL S. WATSON,
*Of Counsel.*

Endorsed: Waterman vs. Modern Pen. Co. Election. United States Circuit Court of Appeals Second Circuit. Filed Jun- 4, 1912. William Parkin, Clerk.

At a Stated Term of the United States Circuit Court of Appeals for the Second Circuit, Held at the Court Rooms in the Post Office Building, City of New York, on the 7th Day of June, 1912.

Present:

Hon. Henry G. Ward,
Hon. Walter C. Noyes,
Circuit Judges.
Hon. George C. Holt, District Judge.

THE L. E. WATERMAN COMPANY, Complainant-Appellant,
vs.
THE MODERN PEN COMPANY, Defendant-Appellant.

A petition for a rehearing having been filed herein on behalf of the complainant, upon consideration thereof it is

Ordered that said petition be and hereby is denied.

W. C. N.

Endorsed: United States Circuit Court of Appeals Second Circuit. L. E. Waterman Co. vs. Modern Pen Co. Order. United States Circuit Court of Appeals Second Circuit. Filed Jun- 10, 1912. William Parkin, Clerk.

At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms in the Post Office Building, in the City of New York, on the 10th Day of June, One Thousand Nine Hundred and Twelve.

Present:

Hon. Henry G. Ward,
Hon. Walter C. Noyes,
Circuit Judges;
Hon. George C. Holt, District Judge.

L. E. Waterman Company, Plaintiff,
against
Modern Pen Company, Defendant.

Appeals from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the Decree of said District Court be and it hereby is modified as follows:

The writ of injunction must also forbid the use of the words "A. A. Waterman & Co.," "A. A. Waterman & Company," and "A. A. Waterman."

Under the circumstances enumerated in said decree the defendant must use the words "Arthur A. Waterman & Co.," instead of "A. A. Waterman & Co." or "A. A. Waterman," and the suffix "not connected with the L. E. Waterman Co." in lieu of the suffix "not connected with the original 'Waterman' pen."

The penholders which the defendant has in good faith already marked in accordance with the decree of the District Court with the suffix "not connected with the original Waterman pen," or in accordance with the opinion of this Court before the use of the name "Arthur" was required, may be sold.

The costs of this Court and the costs of the lower Court arising after the decision of this Court upon the former appeal will be divided equally between the parties; costs of the lower Court accruing before that time are awarded to the complainant.

With the modifications stated above the decree of the District Court is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

W. C. N.

Endorsed: United States Circuit Court of Appeals, Second Circuit. Waterman Co. vs. Modern Pen Co. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jun 10, 1912. William Parkin, Clerk.

L. E. WATERMAN COMPANY, Appellant,
against
MODERN PEN COMPANY, Appellee.

The above named appellant, L. E. Waterman Company, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals, for the Second Circuit, and that a judgment has therein been rendered on the 10th day of June, A. D., 1912, modifying and as modified affirming the decree of the District Court of the United States, for the Southern District of New York, and that the matter in controversy in said action exceeds Ten thousand dollars ($10,000) besides costs, and that said judgment is a final judgment; that this cause is one in which the United States Circuit Court of Appeals, for the second Circuit, has final jurisdiction and that this is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellant, L. E. Waterman Company, prays that an appeal be allowed it in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals, for the Second Circuit, to send the records and proceedings in said cause, with all information concerning the same, to the Supreme Court of the United States in order that the errors complained of in the Assignment of Errors herewith filed by the said appellant, may be reviewed, and if error be found, correct it according to the laws and customs of the United States.

SAMUEL S. WATSON,
*Attorney for Appellant.*

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant,
against
MODERN PEN COMPANY, Appellee.

STATE OF NEW YORK,
*County of New York, ss:*

Frank D. Waterman, being duly sworn, on his oath, says, that he is the President of the appellant and is personally acquainted with its business affairs; that the business and sales of said appellant during the last three years have been in excess of one million, five hundred thousand dollars ($1,500,000) per annum and appellant's profits in said business during the last three years have been more than Twenty-five thousand dollars ($25,000) per year; that the appellant has expended upwards of two millions and a half ($2,500,000) in creating its good will and making known and popularizing its goods under its trade-names and trade-marks now in suit; that the value of appellant's good will is more than one million dollars ($1,000,000); that the amount of damages suffered by appellant by reason of appellee's acts herein complained of and the matters in con-

troversy in this action exceeds the sum of Two hundred fifty thousand dollars ($250,000), exclusive of interest and costs.

FRANK D. WATERMAN.

Sworn to before me this 23d day of July, 1912.

[NOTARIAL SEAL.] AGNES M. VIKBERG,
*Notary Public, Kings County, No.* 26.

Certificate filed in New York County, #24.

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant,
against
MODERN PEN COMPANY, Appellee.

*Assignment of Errors.*

The appellant in the above entitled cause in connection with its petition for appeal herein, presents and files therewith its Assignment of Errors as to which matters and things it says that the judgment and decree entered herein on the 10th day of June, 1912, is manifest error and that the United States Circuit Court of Appeals, for the Second Circuit, erred in this, to wit:

1. The Court erred in holding and deciding that the appellee could use the name "Arthur A. Waterman & Co.," or "Arthur A. Waterman & Company" if used with the suffix "not connected with the L. E. Waterman Co." in marking, advertising and selling fountain pens.

2. The Court erred in not passing a decree of injunction absolutely prohibiting the appellee from using in connection with the manufacture or sale of fountain pens, or parts thereof, the name "Arthur A. Waterman & Co.," or "Arthur A. Waterman & Company" or "Arthur A. Waterman."

3. The Court erred in not holding that the alleged partnerships (*a*) between Arthur A. Waterman and Dewey; (*b*) between Frazer, Geyer and Waterman; (*c*) between the two Chapmans and Waterman, were all mere shams or fraudulent devices used as cloaks and covers to secure the name "Waterman," "A. A. Waterman," "Arthur A. Waterman," "A. A. Waterman & Co.," "Arthur A. Waterman & Co." and "Arthur A. Waterman & Company" in the fountain pen business for the purpose of filching the trade and business of the appellant's long prior established and existing business.

4. The Court erred in holding that any of the alleged partnerships ((*a*) of Dewey and Waterman; (*b*) of Frazer, Geyer and Waterman; or (*c*) of the Chapmans and Waterman) were bona fide firms, or at any time did a bona fide business.

5. The Court erred in not holding that the agreement of June 12, 1905, upon which the appellee depends for its right to use the names

"Arthur A. Waterman," "Arthur A. Waterman & Co.," or "Arthur A. Waterman & Company" was a mere sham or fraudulent device.

6. The Court erred in not holding that neither the appellee, nor the alleged partnership of which the appellee is the selling agent, are the assignees or successors, or in privity with any prior bona fide concern entitled to use in any manner whatsoever in the fountain pen business the names "Arthur A. Waterman," "Arthur A. Waterman & Co.," or "Arthur A. Waterman & Company."

7. The Court erred in not decreeing to the appellant the damages which it has suffered by reason of the appellee's infringement of appellant's trade-marks, and for the damages appellant has suffered by reason of the appellee's unfair trade practices.

8. The Court erred in not decreeing that a writ of permanent injunction issue against the appellee, its agents, officers and servants, forbidding it or them, or any of them, from—

(*a*) Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any fountain pen of other manufacture than that of the appellant under the name of Waterman or Waterman's, or Waterman Pens, or Waterman's Pens, or Waterman Fountain Pens, or Waterman's Fountain Pens, or Ideal Pens, or any mark or name in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or deceive purchasers, or which would indicate that the fountain pens sold, represented or advertised are fountain pens of appellant's manufacture.

(*b*) Infringing the appellant's trade-mark "Waterman's Ideal Fountain Pen, N. Y.," or infringing the appellant's trade-mark "Ideal", and from manufacturing or selling fountain pens (other than fountain pens of appellant's manufacture) having the said trade-marks or either of them, or any simulation or colorable imitation thereof, on such fountain pens, whether on the holder or on the gold pen, or on labels, boxes, signs, letter-heads, bill-heads, circulars, or advertisements accompanying or used in connection with the making or selling of such fountain pens, or in any manner whatsoever.

(*c*) Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any fountain pens of other manufacture than that of the appellant, engraved, imprinted or otherwise marked with any representation of a globe on such fountain pens, or upon boxes containing such pens, or on labels, signs, circulars or advertising accompanying or used in connection with the advertising or selling of such fountain pens.

(*d*) Using in connection with the manufacture or sale of fountain pens or parts thereof, other than fountain pens of appellant's manufacture, the name "Waterman" or "Waterman's" or "A. A. Waterman," or "A. A. Waterman & Co.," or "A. A. Waterman & Company" or "Arthur A. Waterman & Co." or "Arthur A. Waterman & Company" or "Arthur A. Waterman."

9. The Court erred in not taxing all of the costs against the appellee.

Wherefore appellant prays that said judgment and decree of said

United States Circuit Court of Appeals, for the Second Circuit, may be corrected according to the laws and customs of the United States.

SAMUEL S. WATSON,
*Attorney for Appellant.*

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant,
against
MODERN PEN COMPANY, Appellee.

It is hereby ordered that an appeal in the above entitled cause to the Supreme Court of the United States be and is hereby allowed as prayed upon condition that appellant, within ten (10) days, give bond according to law in the sum of One Thousand Dollars, which shall operate as a supersedeas bond for all costs taxed against the appellant.

WALTER C. NOYES,
*United States Circuit Judge, Second Circuit.*

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. L. E. Waterman Company, appellant, against Modern Pen Company, appellee. Petition for Appeal, Assignment of Errors, Order Granting Appeal. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 8, 1912. William Parkin, Clerk. Copy received this 8th day of August, 1912. Alexander S. Bacon, Attorney for Modern Pen Company. Samuel S. Watson, Attorney for Appellant, 10 Wall Street, New York.

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Plaintiff in Error (Plaintiff Below),
against
MODERN PEN COMPANY, Defendant in Error (Defendant Below).

Know all men by these presents That the Massachusetts Bonding and Insurance Company, a Corporation organized and existing under the laws of the State of Massachusetts and authorized to transact business in the State of New York, having an office and place of business at # 84 William Street, Borough of Manhattan, City of New York, is held and firmly bound unto the Modern Pen Company in the sum of One Thousand ($1,000.00) Dollars, lawful money of the United States, to be paid to the said Modern Pen Company above-named, and for which payment well and truly to be made, it binds itself and its successors, jointly and severally, firmly by these presents.

Sealed with its seal and dated this 9th day of August, 1912.

Whereas, the above-named L. E. Waterman Company has prosecuted its Appeal to the United States Supreme Court to modify and correct the Decree rendered in the above entitled cause by the United States Circuit Court of Appeals on the 10th day of June,

1912, and entered and filed in the office of the Clerk of said Court on the 10th day of June, 1912.

Now, therefore, the condition of the above obligation is such that if the above-named L. E. Waterman Company, Plaintiff in Error, shall prosecute its Appeal with effect and answer all damages and costs if it fail to make its appeal good, and shall, in the event of the affirmance of the judgment aforesaid or dismissal of the Appeal, comply with the said Decree therein, and pay the damages and costs as provided therein, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Dated New York, August 9th, 1912.

MASSACHUSETTS BONDING AND
INSURANCE COMPANY,
By WILLIAM H. CONROY,
*Resident Vice-President.*

Attest:
EDWARD H. ROWLEY,
*Attorney-in-Fact.*

STATE, CITY AND COUNTY OF NEW YORK, *ss:*

On this 9th day of August A. D. 1912, before me personally appeared William H. Conroy to me known, who being by me duly sworn, did depose and say: that he resided in the City of New York; that he is the Resident Vice President of Massachusetts Bonding and Insurance Company, the corporation described in and which executed the attached instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets, as ascertained in the manner provided in chapter 33 of the Consolidated Laws of the State of New York for the year 1909.

And the said William H. Conroy further said, that he was acquainted with Edward H. Rowley and knew him to be the Attorney-in-fact of said corporation; that the signature of said Edward H. Rowley subscribed to the said instrument is in the genuine handwriting of said Edward H. Rowley and was thereto subscribed by like order of said Board of Directors and in the presence of him, the said William H. Conroy.

MARGARET ACRES,
*Notary Public, Kings County, N. Y.*

Certificate filed in New York County.

At a regular meeting of the Board of Directors of Massachusetts Bonding and Insurance Company, held at the principal office of said Company, in the city of Boston, on the 18th day of January, 1912, the following resolution was adopted, and is still in force:

'Resolved, that this Company do and it hereby does appoint William H. Conroy its Resident Vice President, George E. Hayes its Assistant Manager, O. Wilson Gott and Albert C. Spooner its Resident Secretaries, and E. M. Connolly and Edward H. Rowley its

Attorneys-in-fact, and authorizes and empowers any two of them jointly to execute, deliver and attach the seal of this Company to any and all Contracts guaranteeing the fidelity of persons holding places of public or private trust, guaranteeing the performance of Contracts, other than insurance policies, and executing or guaranteeing Bonds and Undertakings required or permitted in all actions or proceedings or by law allowed."

STATE, CITY AND COUNTY OF NEW YORK, *ss:*

I, E. M. Connolly, Attorney-in-Fact of Massachusetts Bonding and Insurance Company, have compared the foregoing resolutions with the original thereof, as recorded in the Minute Book of said Company, and do hereby certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution. Given under my hand and the seal of the Company at the Borough of Manhattan, City of New York this 9th day of August, 1912.

E. M. CONNOLLY,
*Attorney-in-Fact.*

*Statement of the Financial Condition of the Massachusetts Bonding and Insurance Company at the Close of Business, December* 30, 1911.

Assets.

| | |
|---|---|
| Massachusetts State, County and Municipal Bonds | $1,118,898.00 |
| Other Municipal Bonds | 180,450.00 |
| Railroad Bonds | 365,550.00 |
| Miscellaneous Bonds | 50,000.00 |
| Bank and Miscellaneous Stocks | 69,500.00 |
| Cash in Office and Banks | 181,816.93 |
| Accrued Interest | 18,505.78 |
| Premiums in Course of Collection (less Commission) | 200,430.65 |
| Other Assets | 34,187.01 |
| Total Assets | $2,219,338.37 |

Liabilities.

| | |
|---|---|
| Premium Reserve | $404,122.43 |
| Claim Reserve | 133,065.61 |
| Reserve for Taxes | 12,287.31 |
| Total Reserves | 549,475.35 |
| Reserve for all other Liabilities and Contingencies including Reinsurance | 41,065.46 |
| Capital | 1,000,000.00 |
| Total Liabilities | $1,590,540.81 |
| Net Surplus | 628,797.56 |
| | $2,219,338.37 |

Surplus to Policy-Holders ..... $1,628,797.56

[SEAL.]

STATE, CITY AND COUNTY OF NEW YORK, *ss:*

E. M. Connolly, being duly sworn, says that he is the Attorney-in-Fact of Massachusetts Bonding and Insurance Company, and that the above is a correct statement of the financial condition of the Company on December 30th, 1911.

E. M. CONNOLLY,
*Attorney-in-Fact.*

Sworn to and subscribed before me this 9th day of August A. D., 1912.

MARGARET ACRES,
*Notary Public, Kings County, N. Y.*

Certificate filed in New York County.

(Endorsed:) Approved: Walter C. Noyes, U. S. C. J. Bond. Amount, $—. L. E. Waterman Company vs. Modern Pen Company. Massachusetts Bonding and Insurance Company: Our bond your security. Massachusetts Bonding and Insurance Company. New York Office, 84 William Street, William H. Conroy, Resident Vice-President. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 15, 1912. William Parkin, Clerk.

UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 1943 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of L. E. Waterman Company against Modern Pen Company as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 6th day of September in the year of our Lord One Thousand Nine Hundred and Twelve and of the Independence of the said United States the One Hundred and Thirty-seventh.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

The United States Circuit Court of Appeals, Second Circuit.

L. E. WATERMAN COMPANY, Appellant,
against
MODERN PEN COMPANY, Appellee.

THE UNITED STATES OF AMERICA,
*Second Circuit:*

To the Modern Pen Company:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, thirty (30) days after the date of his citation, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals, for the Second Circuit, wherein the L. E. Waterman Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter C. Noyes, United States Circuit Judge and Judge of the United States Circuit Court of Appeals for the Second Circuit, this 7th day of August, A. D. 1912.

WALTER C. NOYES,
*Judge United States Circuit Court of Appeals, Second Circuit.*

Service of citation admitted and copy of citation received this 8th day of August, 1912.

ALEXANDER S. BACON,
*Attorney for Modern Pen Company.*

[Endorsed:] United States Circuit Court of Appeals for the Second Circuit. L. E. Waterman Company, appellant, against Modern Pen Company, appellee. (Original.) Citation. Samuel S. Watson, Attorney for Appellant, 10 Wall Street, New York. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 8, 1912. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant-Appellee,
vs.
MODERN PEN COMPANY, Appellee-Appellant.

The above named appellee-appellant, Modern Pen Company, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals, for the Second Circuit, and that a judgment was rendered herein on the 10th day of June, A. D. 1912, modifying, and as modified, affirming the decree of the District

Court of the United States, for the Southern District of New York, and that the matter in controversy in said action exceeds $10,000, besides costs, and that said judgment is a final judgment; that this cause is one in which the United States Circuit Court of Appeals for the Second Circuit has final jurisdiction and that this is a proper cause to be reviewed by the Supreme Court of the United States, on appeal.

Wherefore, the said appellee-appellant, Modern Pen Company, prays that an appeal be allowed it in the above entitled cause (said L. E. Waterman Company, having heretofore been permitted to take such appeal) directing the Clerk of the United States Circuit Court of Appeals, for the Second Circuit, to send the records and proceedings in said cause, with all information concerning the same, to the Supreme Court of the United States in order that the errors complained of in the Assignment of Errors herewith filed by said Appellee-Appellant, Modern Pen Company, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

ALEXANDER S. BACON,
*Attorney for Appellee-Appellant, Modern Pen Company, No. 37 Liberty Street, Manhattan, New York City.*

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant-Appellee,
vs.
MODERN PEN COMPANY, Appellee-Appellant.

COUNTY OF NEW YORK, *ss:*

Hobart W. Geyer, being duly sworn, says that he is the manager of the appellee-appellant, Modern Pen Company; that the amount involved in this controversy is far more than $10,000; that the Modern Pen Company has spent hundreds of thousands of dollars in advertising, and that it purposes to spend large sums annually in such advertising. The most important controversy on this appeal is to determine whether or not A. A. Waterman & Co. of which the Modern Pen Company is the sole sales agent, shall be required in all advertisements and in marking their goods, to place in such advertisements and on all their fountain pens and parts thereof the suffix "Not connected with the L. E. Waterman Co." The Modern Pen Company claims that such suffix was improperly required, and that to require the Modern Pen Company to place such suffix in connection with the trade name of A. A. Waterman & Co., damaged the Modern Pen Company in far greater a sum than $10,000 per annum. The complainant's application to appeal to the U. S. Supreme Court has already been allowed.

HOBART W. GEYER.

Sworn to before me this 23d day of November, 1912.
V. M. TURNER,
*Notary Public, New York County,* # 57.

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant-Appellee,
vs.
MODERN PEN COMPANY, Appellee-Appellant.

The appellee-appellant, Modern Pen Company, in the above entitled cause, in connection with its petition for appeal herein, presents and files herewith its Assignment of Errors, as to which matters and things it says that the judgment and decree entered herein on the 10th day of June, A. D. 1912, is manifest error and that the United States Circuit Court of Appeals, for the Second Circuit, erred in this, to wit:

1. The Court erred in holding and deciding that the defendant, the Modern Pen Company, the appellee-appellant could not use the words "Waterman," "Waterman's," "A. A. Waterman & Co.," or "A. A. Waterman & Company," or any representation of a globe upon any part of any fountain pen or in connection with the sale of fountain pens, the bill of complaint herein making no reference whatever to the representation of a globe or the use thereof by either of the parties herein; and there being no evidence showing that the said Modern Pen Company had ever used any representation of a globe or the words "Waterman" or "Waterman's" alone in connection with the manufacture and sale of fountain pens or any parts thereof.

2. The Court erred in holding and deciding that the said Modern Pen Company, could not use and had not the right to use the words "Arthur A. Waterman & Co." or "Arthur A. Waterman & Company" without the words "not connected with the L. E. Waterman Co." in appropriate juxtaposition therewith, under the circumstances set forth in the decree appealed from to said United States Supreme Court;

3. The Court erred in not holding and deciding that the defendant, the Modern Pen Company, as the sole selling agent of the firm of A. A. Waterman & Co., (manufacturers of fountain pens and the parts thereof) had not the right to use the trade name "A. A. Waterman & Co." or "Arthur A. Waterman & Co." upon its fountain pens or the parts thereof, without any suffix or prefix or limitation whatsoever;

4. The Court erred in not holding and deciding that the present firm of A. A. Waterman & Co., (Messrs. I. E. and W. L. Chapman), as assignees of their retiring partner, Mr. Arthur A. Waterman, were and are entitled to all the rights and privileges in relation to the use of the trade name "A. A. Waterman & Co." the same is if said Arthur A. Waterman were still a member of said firm;

5. The Court erred in not holding and deciding that the words "Waterman" or "Waterman's", being a family name, may not be appropriated as a trade name to the exclusion of the use thereof to any

other person named Waterman, or to his assigns, if used bona fide, with his true Christian name or initials;

6. That the Court erred in holding that said Modern Pen Company must pay to said L. E. Waterman Company, its costs and charges and disbursements paid or incurred in this action prior to November 14th, 1910, and that the costs thereafter be equally divided between them, but that said Modern Pen Company was entitled to costs of this action, from the beginning, against the said L. E. Waterman Company, the complainant;

7. That the Court erred in holding that said Modern Pen Company had not the right to use the name "A. A. Waterman & Co." in making its fountain pens and parts thereof and in the manufacture and sale thereof, without any prefix or suffix, and without changing the same to "Arthur A. Waterman & Co."

Wherefore said Modern Pen Company, appellee-appellant, prays that said judgment and decree of said United States Circuit Court of Appeals, for the Second Circuit, may be corrected according to the laws and customs of the United States.

ALEXANDER S. BACON,
*Attorney for Appellee-Appellant, Modern Pen Company, No. 37 Liberty Street, Manhattan, New York City.*

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant-Appellee,
vs.
MODERN PEN COMPANY, Appellee-Appellant.

It is hereby ordered that an appeal in the above entitled cause to the Supreme Court of the United States be and is hereby allowed as prayed upon condition that the appellee-appellant, Modern Pen Company, within ten (10) days, give a bond according to law in the sum of one thousand dollars, which shall operate as a supersedeas bond for all costs taxed against the appellee-appellant, Modern Pen Company.

WALTER C. NOYES,
*United States Circuit Judge, Second Circuit.*

A. E. G.

(Endorsed:) U. S. Circuit Court of Appeals, 2nd Circuit. L. E. Waterman Co., App'l't-Resp't vs. Modern Pen Company, Resp't-App'l't. Petition for Appeal, Assignment of Errors and order allowing appeal. Alexander S. Bacon, Attorney for Modern Pen Co. 37 Liberty Street, Borough of Manhattan, New York City. To ——— ———, Attorney for —. Receipt of a copy of the within petition, assignment and order is hereby admitted. Dated N. Y. Dec. 2, 1912. Samuel S. Watson, Attorney for L. E. Waterman Co. United States Circuit Court of Appeals, Second Circuit. Filed Dec. 4, 1912. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant-Appellee,
against
MODERN PEN COMPANY, Appellee-Appellant.

Know all men by these presents, That the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 49 Cedar Street, in the City of New York, County and State of New York, is held and firmly bound unto L. E. Waterman Company, in the sum of One Thousand Dollars ($1,000), lawful money of the United States, to be paid to the said L. E. Waterman Company above-named, and for which payment well and truly to be made, it binds itself and its successors, jointly and severally, firmly by these presents.

Sealed with its seal and dated this 5th day of December, 1912.

Whereas, the above named Modern Pen Company has prosecuted its appeal to the United States Supreme Court to modify and correct the Decree rendered in the above entitled cause by the United States Circuit Court of Appeals on the 10th day of June, 1912, and entered and filed in the office of the Clerk of said Court on the 10th day of June, 1912.

Now, therefore, the condition of the above obligation is such that if the above-named Modern Pen Company, Appellee-Appellant, shall prosecute its Appeal with effect and answer all damages and costs if it fail to make its appeal good, and shall, in the event of the affirmance of the judgment aforesaid or dismissal of the Appeal, comply with the said Decree therein, and pay the damages and costs as provided therein, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Dated New York, December 5th, 1912.

UNITED STATES FIDELITY AND
GUARANTY COMPANY,
By ALONZO GORE OAKLEY,
*Attorney-in-Fact.*

Attest:

WILLIAM H. ESTWICK,
*Attorney-in-Fact.*

*Affidavit, Acknowledgment and Justification by the United States Fidelity and Guaranty Company.*

[Emblem:] Contract, Fidelity, Judicial, Casualty.

STATE OF NEW YORK,
*County of New York, ss:*

Before me personally came Alonzo Gore Oakley, known to me to be Attorney in Fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the an-

nexed bond of Modern Pen Company as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, State of New York, and that he is the Attorney in Fact of the said United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Modern Pen Company is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as Attorney in Fact of said Company; and that he is acquainted with William H. Estwick and knows him to be Attorney-in-fact of said Company; and that the signature of said William H. Estwick subscribed to said bond is the genuine handwriting of said William H. Estwick and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars ($2,000,000.00).

ALONZO GORE OAKLEY.

Sworn to, acknowledged before me, and subscribed in my presence this 5 day of Dec. 1912.

C. D. MARSAC,
*Notary Public, New York County.*

(Endorsed:) United States Circuit Court of Appeals for the Second Circuit. L. E. Waterman Company, Appellant-Appellee against Modern Pen Company, Appellee-Appellant. Bond. The within bond is hereby approved as to the form and sufficiency thereof. Dated, Dec. 5th, 1912. Walter C. Noyes, U. S. Circuit Judge. United States Circuit Court of Appeals, Second Circuit. Filed Dec. 5, 1912. William Parkin, Clerk.

UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 11 inclusive, contain a true and complete transcript of the appeal papers on the cross-appeal of defendant, in the case of L. E. Waterman Company, against Modern Pen Company as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 6th day of December in the year of our Lord One Thousand Nine Hundred and twelve and

of the Independence of the said United States the One Hundred and thirty-seventh.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

United States Circuit Court of Appeals for the Second Circuit.

L. E. WATERMAN COMPANY, Appellant-Appellee,

vs.

MODERN PEN COMPANY, Appellee-Appellant.

To the L. E. Waterman Company:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, thirty days after the date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals, for the Second Circuit, wherein you are appellant and appellee and the Modern Pen Company is appellee and appellant, to show cause, if any there be, why the decree rendered, as in said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter C. Noyes, Judge of the United States Circuit Court of Appeals, for the second circuit, this 25th day of November, A. D. 1912.

WALTER C. NOYES,
*Judge United States Court of Appeals.*

[Endorsed:] City Clerk's, County Clerk's Index No. —, ——, 191–. U. S. Circuit Ct. of Appeals, 2nd Circuit. L. E. Waterman Co., Applt.-Respt., vs. Modern Pen Co., Respt.-Applt. Original. Citation. Alexander S. Bacon, Attorney for Modern Pen Co., 37 Liberty Street, Borough of Manhattan, New York City. To —— ——, Attorney for —— ——. Receipt of a copy of the within citation is hereby admitted. Dated N. Y. Dec. 2, 1912. Samuel S. Watson, Attorney for L. E. Waterman Co. 6.95. United States Circuit Court of Appeals, Second Circuit. Filed Dec. —, 1912. William Parkin, Clerk.

Endorsed on cover: File No. 23,350. U. S. Circuit Court Appeals, 2d Circuit. Term No. 340. L. E. Waterman Company, appellant, vs. Modern Pen Company. Filed September 7, 1912. File No. 23,451. Term No. 393. Modern Pen Company, appellant, vs. L. E. Waterman Company. Filed December 10th, 1912. File Nos. 23,350 and 23,451.